



April 13, 2013

Ms. Wendy Cosin, Deputy Planning Director
City of Berkeley
2118 Milvia Street, 3rd Floor
Berkeley, CA 94704

Dear Ms. Cosin:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Berkeley Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14A) to the California Department of Finance (Finance) on February 27, 2013 for the period of July through December 2013. Finance has completed its review of your ROPS 13-14A, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations:

- Item No. 3 – \$1 Million Bond – City Loan in the amount of \$554,265. The total outstanding obligation represents accrued interest on a \$1 million bond issued on December 1, 1997 between the City of Berkeley (City) and the former redevelopment Agency (RDA). Finance reviewed this item during the January through June 2013 ROPS (ROPS III) period as a total outstanding obligation of \$1.6 million and denied the item although no payment was being requested for the ROPS III period. A Meet and Confer was held for ROPS III on November 29, 2012. In its December 18, 2012 letter, Finance stated that the item would be re-reviewed during the next ROPS period since there was no funding was requested at the time.

As payments have been placed on ROPS 13-14A, Finance has re-reviewed this item to determine if it meets the definition of an enforceable obligation. The bond indenture was between the RDA and the City and identifies the City as the sole bondholder. HSC section 34171 (e) defines indebtedness obligations as bonds, notes, and certificates of participation issued or delivered by the RDA to third party investors or bondholders. The City is not considered a third party, and therefore this item does not meet the definition of indebtedness. Additionally, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. Therefore, the City's demand letter dated January 15, 2013 for the amount of \$1,554,265 does not obligate the Agency to make payments to the City. Consequently, the Agency's request for

\$227,133 in interest payment is not permitted and is not eligible for funding from the Redevelopment Property Tax Trust Fund (RPTTF).

- Item No. 18 – Savo Island Loan Payable in the amount of \$759,600. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. This shall remain the case until and unless a finding of completion is issued by the Department of Finance and the oversight board makes a finding that the loan was for legitimate redevelopment purposes pursuant to HSC section 34191.4 (b). Therefore, this item continues to be denied as an enforceable obligation and not eligible for RPTTF funding on this ROPS.
- Items 20 through 28 – Various Capital Projects funded with \$518,208 in bond proceeds. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for these line items have not yet been awarded. Pursuant to HSC section 34191.4 (c), Agency’s request to use bond funds for these obligations may be allowed once the Agency receives a Finding of Completion from Finance and if the bond proceeds proposed for use were derived from bonds issued prior to January 1, 2011.
- Item Nos.15, 16, and 17 – Various items totaling \$55,000. These items are considered general administrative costs and have been reclassified. Although this reclassification increased administrative costs to \$55,000, the administrative cost allowance has not been exceeded.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. This determination applies only to items where funding was requested for the six month period. If you disagree with the determination with respect to any items on your ROPS 13-14A, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance’s website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency’s maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$580,293 as summarized below:

Approved RPTTF Distribution Amount	
For the period of July through December 2013	
Total RPTTF funding requested for obligations	\$ 849,632
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 3	277,133
Item 18	29,040
Items 15*, 16*, and 17*	55,000
Total approved RPTTF for enforceable obligations	\$ 488,459
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	180,000
Minus: ROPS II prior period adjustment	(88,166)
Total RPTTF approved for distribution:	\$ 580,293

*Reclassified as administrative cost

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Beliz Chappuie, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Danita Hardaway, Associate Management Analyst, City of Alameda
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County
California State Controller's Office