



May 17, 2013

Ms. Debra Auker, Administrative Services Director
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Dear Ms. Auker:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS 13-14A) letter dated April 15, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Emeryville Successor Agency (Agency) submitted a ROPS 13-14A to Finance on March 1, 2013 for the period of July through December 2013. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on May 2, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific items being disputed.

- Item Nos. 25 and 30 – Statutory Monitoring Requirements totaling \$2,978,117 are not enforceable obligations. Finance continues to deny these items. HSC section 34176 (a)(1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Since the City of Emeryville Housing Authority assumed the housing functions, the administrative costs associated with these functions are the responsibility of the housing successor. Therefore, these items, in the respective amounts of \$29,618 and \$22,497, are not enforceable obligations and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.
- Item No. 71 – Supplemental Educational Revenue Augmentation Fund Loan in the amount of \$9,592,732. Finance continues to deny this item. HSC section 34176 (e) (6) (B) specifies loan or deferral repayments to the Low and Moderate Income Housing Fund shall not be made prior to the 2013-14 fiscal year. In the Agency's request for the Meet and Confer, the Agency acknowledges that while ROPS 13-14A falls within fiscal year 2013-14, repayment of this loan is subject to the repayment formula outlined in HSC section 34191.4 (b) (2) (A) and, therefore, not eligible for funding until starting with ROPS 14-15A.

However, the Agency specifically asked that Finance approve this as an enforceable obligation on this ROPS, notwithstanding that the loan will not be eligible for funding until ROPS 14-15A. Upon the Agency's submission of this obligation on a future ROPS, Finance will review the relevant documentation and conclude as to its enforceability. Until that time; however, this item is not an enforceable obligation and is not eligible for RPTTF funding for the current period.

- Item No. 98 – Emeryville Center of Community Life Funding Agreement for \$21.2 million payable with Bond Proceeds. Pursuant to HSC section 34191.4 (c), the Agency's request to use bond funds for these obligations may be allowable once the Agency receives a Finding of Completion from Finance.

During the Meet and Confer process, the Agency advised Finance that it concurrently requested a Meet and Confer in connection with the Other Funds Due Diligence review, for which a determination was issued May 8, 2012. Thus far, however, the Finding of Completion has not been issued. Therefore, this item continues to be denied during the upcoming period.

- CAC ROPS II Prior Period Adjustment in the amount of \$872,587. Pursuant to HSC section 34186 (a) the differences between actual payments and past estimated obligations on ROPS reported on subsequent ROPS, are subject to audit by the CAC and the State Controller. Finance defers to the adjustments made by the CAC; however, has to authority to accept or disregard findings reported by the CAC if Finance disagrees with the reported adjustments made. As such, Finance will continue to defer to the prior period adjustment amount of \$872,587.

Should the Agency recognize an underestimated amount requested on future ROPS, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

Furthermore, the following funding source changes have been made:

- The Other Funds and Accounts Due Diligence Review Meet and Confer Review was held on April 24, 2013, and a determination letter was issued by Finance on May 8, 2013. Finance approved \$2,738,439 to be retained for ROPS 13-14A enforceable obligations. Therefore, the funding source for Items No. 39, 41, 43, 50, 51 and 76 has been reversed to reflect Reserve Balance funding as originally requested. In addition, Item No. 24 has been changed from Other Funds to Reserve Balance Funds.

In addition, Finance notes the letter from Mr. Michael Biddle, City of Emeryville Attorney, dated May 2, 2013, requesting the following changes:

- Item Nos. 36 and 37 – Complaint Environmental Cost Recovery in the amount of \$2,745,879 and \$85,713, respectively. As there is longer pending litigation, the total outstanding debt or obligation due for these obligations should be changed to zero and both obligations can be retired.

- Item No. 38 – Robinson Settlement Agreement in the amount of \$750,000. Mr. Michael Biddle requested that the total due during fiscal year 2013-14 be changed from zero to \$750,000 to be paid from Other Funds.
- Item No. 51 – Professional Services Agreement in the amount of \$3,000,000. Mr. Michael Biddle also requested that the six-month ROPS 13-14A Period to be changed from \$1,000,000 to \$2,000,000, as well as a change in total due during fiscal year 2013-14 should be changed from \$2,000,000 to \$3,000,000.

At this time Finance cannot make the requested changes as they have not gone through the Oversight Board for approval. These changes do not affect the ROPS 13-14A amounts approved for expenditure, and we suggest the Agency add them to the ROPS 13-14B.

In addition, per Finance's ROPS determination letter dated April 15, 2013, the following items continue to be denied and were not contested by the Agency:

- Item No. 4 – Contract for Services in the amount of \$50,000. This item is considered general administrative costs and has been reclassified. Although this reclassification increased administrative costs to \$394,453, the administrative cost allowance has not been exceeded.
- Item No. 79 – Amtrak Lease in the amount of \$1,036,861. The RDA satisfied its lease obligation relating to this agreement on May 1, 2011 and made the final payment. Therefore, as this is no longer an enforceable obligation, the item should be retired.
- Item No. 80 – Amtrak Station Property Taxes in the amount of \$13,439. Documents submitted by the Agency demonstrate that the Wareham Development Corporation is responsible up to \$15,000 per year for property taxes and the RDA is responsible for taxes in excess of \$15,000 per year. The 2013-14 property taxes totaled \$30,380. Therefore, of the \$28,819 requested, \$15,380 (\$30,380-\$15,000) is approved as an enforceable obligation. However, the difference of \$13,439 is not eligible for RPTTF funding.
- Item No. 94 – Participation Agreement in the amount of \$50,000 from other funding sources. According to the information provided by the Agency, the agreement with the participant has been terminated by the Agency. Since this eliminates any circumstances under which the Agency would be obligated to return the \$50,000 deposit, the Agency's request to reduce the obligation to zero and retire the item is approved.

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. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for July through December 2013. Finance's determination is effective for this time period only and should not be conclusively relied on 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 Agency's maximum approved RPTTF distribution for the reporting period is \$14,476,434 as summarized below:

Approved RPTTF Distribution Amount	
For the period of July through December 2013	
Total RPTTF funding requested for obligations	\$ 24,827,796
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 4*	50,000
Item 25	29,618
Item 30	22,497
Item 71	9,592,732
Item 79	164,942
Item 80	13,439
Total approved RPTTF for enforceable obligations	\$ 14,954,568
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	394,453
Minus: ROPS II prior period adjustment	(872,587)
Total RPTTF approved for distribution:	\$ 14,476,434

*Reclassified as administrative cost

Pursuant to HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the CAC and the State Controller. The proposed CAC adjustments were received in time for inclusion in this letter. Therefore, the amount of RPTTF approved in the above table includes the prior period adjustment that was reported by the CAC.

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.

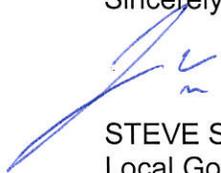
The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property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

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Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Michael Biddle, City Attorney, City of Emeryville
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office