



November 14, 2013

Ms. Ramona Castaneda, Fiscal Services Manager
City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832

Dear Ms. Castaneda:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Fullerton Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to the California Department of Finance (Finance) on September 30, 2013 for the period of January through June 2014. Finance has completed its review of your ROPS 13-14B, 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 for the reasons specified:

- Item Nos. 8 and 45 – Steven Peck Owner Participation Agreement (OPA) totaling \$7,812,000. Although this item was approved for expenditure for the period July through December 2013 (ROPS 13-14A), according to the OPA, the Agency was required by the Schedule of Performance to complete the construction of the parking structure in conjunction with the renovation of the Fox Theatre. According to information provided to Finance, the renovation of the theatre was completed on March 19, 2012. However, no contracts to commence the construction of the parking structure have been created. Additionally, allocating funds for unknown contingencies is not an allowable use of funds. Therefore, this item is not an enforceable obligation and is not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding on this ROPS.
- Item No. 15 – State College Grade Separation Project in the amount of \$1,000,000. The Agency originally requested reserve funding, but is now requesting the use of bond proceeds. It is our understanding a Memorandum of Understanding (MOU) dated June 22, 2011, was executed between the Agency, the City of Fullerton (City), California State University Fullerton (CSUF), and Hope International University (HIU). The MOU states the total costs for the preparation of the plan shall not exceed \$900,000, and the parties agree to share the costs equally (1/3 each or \$300,000) amongst the City/Agency, CSUF, and HIU. Therefore, the Agency is obligated at a cost not to exceed \$150,000. While this agreement is an enforceable obligation, the Agency's request to use bond requested use of bond proceeds has been adjusted by \$850,000, (\$1,000,000- \$150,000) to \$150,000.

- Item No. 16 – Project T Grant Match in the amount of \$98,000. Finance continues to deny this item. These contracts are between the City and various third-parties. The former RDA is neither a party to the contract nor responsible for payment of the contract. Additionally, Finance denied these items as inclusions to the ROPS, later upheld through the Meet and Confer process in the letters dated December 18, 2012 and May 17, 2013. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item No. 18 – Downtown Core & Corridors Specific Plan in the amount of \$1,321,860. Finance continues to deny this item. The contract is between the City and a third-party and the Agency is not a party to the contract. The Agency stated the redevelopment agency (RDA) committed funds for the City's project per the City and RDA Cooperation Agreement dated January 25. However, HSC 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 creation date or for issuance of indebtedness to third-party investors or bondholders. Additionally, Finance denied these items as inclusions to the ROPS, later upheld through the Meet and Confer process in the letters dated December 18, 2012 and May 17, 2013. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item Nos. 19 and 20 – City and Agency Cooperation Agreements dated January 29, 2011 and June 7, 2011 totaling \$15,500,000. Finance continues to deny these items. The Agency contends the cooperation agreements committed the RDA to fund the related capital improvement projects. However, HSC 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 creation date or for issuance of indebtedness to third-party investors or bondholders. Additionally, Finance denied these items as inclusions to the ROPS, later upheld through the Meet and Confer process in the letters dated December 18, 2012 and May 17, 2013. Therefore, these line items are not enforceable obligations and are not eligible for RPTTF funding.
- Item Nos. 23 and 28 – Affordable Housing Monitoring, Administration, and Reporting contracts totaling \$10,735,000. 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 redevelopment agency, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. The City Housing Division assumed the housing functions, as such, the administrative costs associated with these functions is the responsibility of the housing successor. Additionally, Finance denied these items as inclusions to the ROPS, later upheld through the Meet and Confer process in the letter dated May 17, 2013. Therefore, these items are not enforceable obligations and are not eligible for RPTTF funding.
- Item No. 30 – Capital Improvement Projects in the amount of \$95,000. Finance continues to deny this item. Finance originally denied this item because the contract is between the City and Griffin Structures; the RDA is not a party to the contract. The Agency stated the City and RDA signed a cooperation agreement on January 29, 2011 committing RDA funding to the City agreement with Griffin Structures, Inc. However, HSC 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 creation date or for issuance of indebtedness to third-party investors or bondholders. Additionally, Finance denied these items as inclusions to the ROPS, later upheld through the Meet and Confer process in the letters dated December 18, 2012 and May 17, 2013. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item Nos. 41 and 44 – The Alexander (Affordable Housing Development) and associated project management costs totaling \$9,535,000. Insufficient documentation was provided to support the amounts claimed. Additionally, housing administrative costs are not enforceable obligations. 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 redevelopment agency (RDA), all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Since the City Housing Division assumed the housing functions, the administrative costs associated with these functions are the responsibility of the housing successor. Therefore, these items are not enforceable obligations and are not eligible for Bonds funding on this ROPS.

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 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 below table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Except for items denied in whole or in part as enforceable obligations or for items that have been reclassified, Finance is not objecting to the remaining items listed on your ROPS 13-14B. If you disagree with the determination with respect to any items on your ROPS 13-14B, 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 RPTTF distribution for the reporting period is \$5,284,688 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	11,097,653
Total RPTTF requested for administrative obligations	360,000
Total RPTTF requested for obligations	\$ 11,457,653
Total RPTTF requested for non-administrative obligations	11,097,653
<u>Denied Items</u>	
Item No. 8	(2,562,500)
Item No. 16	(45,000)
Item No. 18	(330,465)
Item No. 19	(1,000,000)
Item No. 20	(500,000)
Item No. 23	(60,000)
Item No. 28	(65,000)
Item No. 30	(47,500)
Item No. 45	(1,562,500)
	<u>(6,172,965)</u>
Total RPTTF approved for non-administrative obligations	4,924,688
Total RPTTF approved for administrative obligations	360,000
Total RPTTF approved for obligations	5,284,688
ROPS III prior period adjustment	-
Total RPTTF approved for distribution	\$ 5,284,688

Pursuant to HSC section 34177 (l) (1) (E), agencies are required to use all available funding sources prior to RPTTF for payment of enforceable obligations. Beginning with the ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B review, Finance requested financial records to support the fund balances reported by the Agency; however, Finance was unable to reconcile the financial records to the amounts reported. As a result, Finance will continue to work with the Agency after the ROPS 13-14B review period to properly identify the Agency's fund balances. If it is determined the Agency possesses fund balances that are available to pay approved obligations, the Agency should request the use of these fund balances prior to requesting RPTTF in ROPS 14-15A.

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

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

Absent a Meet and Confer, this is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only to items where funding was requested for the six month period. 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 HSC section 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 Nichelle Thomas, Supervisor or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Charles Kovac, Project Manager, City of Fullerton
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office