



December 20, 2013

Revised

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

Dear Ms. Castaneda:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated December 17, 2013. 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 Finance on September 30, 2013, for the period of January through June 2014. Finance issued a ROPS determination letter on November 14, 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 December 4, 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. 8 and 45 – Steven Peck Owner Participation Agreement (OPA) totaling \$4,125,000. Finance no longer denies this item. Finance initially denied this item even though it was approved for expenditure for the July through December 2013 period (ROPS 13-14A) because 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.

During the Meet and Confer process, the Agency provided additional documentation to identify that the obligation is enforceable and the construction of the parking garage is required to commence. According to Section 6.2.2 of the OPA, the Agency is required to diligently prosecute to completion, the construction of a parking structure at such a time as the renovation of the Fox Theatre commences. During the ROPS 13-14A period, the Agency requested \$1,562,000 in Redevelopment Property Tax Trust Fund (RPTTF) funding; however, due to insufficient RPTTF funding, the item remained unfunded. Therefore, Finance approves \$4,125,000 in RPTTF funding this period.

- Item No. 15 – State College Grade Separation Project in the amount of \$1,000,000 in unspent pre-2011 bond funds. Finance no longer denies this item. The Agency originally requested reserve funding, but revised the funding request to bond proceeds during the initial review. It was our initially understanding that this item was related to a Memorandum of Understanding (MOU) dated June 22, 2011, that 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. However, during the Meet and Confer process, the Agency clarified that the MOU is related to Item No. 17, which Finance did not dispute in the ROPS 13-14B period to be funded from the RPTTF as requested.

Item No. 15 is related to a Cooperative Agreement with the Orange County Transportation Authority (OCTA) dated December 31, 2009. The Agency provided documentation showing that they received their Finding of Completion on May 10, 2013, and was approved to expend their pre-2011 unexpended bond proceeds. During the ROPS 13-14A period, the Agency was approved to expend \$4,400,000; however, the Agency reported expending only \$3,400,000. As such, the Agency is requesting approval to expend the remaining bond funds during the ROPS 13-14B period. Since the Agency has met all requirements in HSC section 34191.4 and is approved to expend the excess bond proceeds, Finance is approving the expenditure of the remaining \$1,000,000 in bond funds.

- Item No. 16 – Project T Grant Match in the amount of \$98,000. Finance continues to deny this item. Finance denied this item as these contracts are between the City and various third-parties; the former redevelopment agency (RDA) is neither a party to the contract nor responsible for payment of the contract. During the Meet and Confer process, the Agency did not provide any additional documents showing that the former RDA had a responsibility to pay for this item. 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. Finance denied the items as the contract is between the City and a third-party and the former RDA is not a party to the contract. The Agency stated the former RDA committed funds for the City's project per the City and RDA Cooperation Agreement dated January 25, 2011. However, 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 creation date or for issuance of indebtedness to third-party investors or bondholders. During the Meet and Confer process, the Agency did not provide any additional documents showing that the former RDA had a responsibility to pay for this item. Therefore, this line item is not an enforceable obligation and is not eligible for RPTTF funding.
- Item Nos. 19 and 20 – City and former RDA 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, Finance denied these items as

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 creation date or for issuance of indebtedness to third-party investors or bondholders. During the Meet and Confer process, the Agency did not provide any additional documents showing that an enforceable obligation existed prior to June 27, 2011. 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. Finance denied these items as the City Housing Division assumed the housing functions. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of administrative obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency could require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484. 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 former RDA is not a party to the contract. The Agency stated the City and RDA signed a cooperation agreement on January 29, 2011 committing former RDA funding to the City agreement with Griffin Structures, Inc. However, 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 creation date or for issuance of indebtedness to third-party investors or bondholders. During the Meet and Confer process, the Agency did not provide any additional documents showing that an enforceable obligation existed prior to June 27, 2011. 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 \$4,600,000 in unspent pre-2011 bond proceeds. Finance no longer denies these items. Finance initially denied these items as insufficient documentation was provided to support the amounts claimed. 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 Housing Division assumed the housing functions, the administrative costs associated with these functions are the responsibility of the housing successor. During the Meet and Confer process, the Agency provided documentation showing that they received their Finding of Completion on May 10, 2013, and met all requirements in HSC section 34191.4. Therefore, the Agency is approved to expend pre-2011 housing bond proceeds in the amount of \$4,600,000.

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.

The Agency's maximum approved RPTTF distribution for the reporting period is \$9,409,688 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. 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)
	<u>(2,047,965)</u>
Total RPTTF approved for non-administrative obligations	9,049,688
Total RPTTF approved for administrative obligations	360,000
Total RPTTF approved for obligations	9,409,688
ROPS III prior period adjustment	-
Total RPTTF approved for distribution	\$ 9,409,688

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/.

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 section 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 Evelyn Suess, Dispute Resolution Supervisor, or Derk Symons, 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