



October 23, 2015

Mr. David Cain, Finance Director
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, CA 92708

Dear Mr. Cain:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m) (1) (A), the City of Fountain Valley Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period January 1 through June 30, 2016 (ROPS 15-16B) to the California Department of Finance (Finance) on September 23, 2015. Finance has completed its review of the ROPS 15-16B.

Based on a sample of line items reviewed and application of the law, Finance made the following determinations:

- Item No. 4 – 2003 Certificates of Participation in the amount of \$2,820,856 requested for ROPS 15-16B and a total outstanding balance of \$8,178,672 is not allowed. Finance continues to deny this item. Finance initially denied this item because the bond is secured solely through lease payments of the City of Fountain Valley (City) and there is no requirement to fund this bond through tax increment. The Agency contends the item is an enforceable obligation because there is an Assignment Agreement, entered into on December 1, 2009, between the former redevelopment agency (RDA) and the City in which the former RDA assumed the City's obligation to make lease payments to the Fountain Valley Financing Authority (Authority) in conjunction with the Authority's 2003 Certificates of Participation.

Pursuant to the Assignment Agreement, the Agency assumed 100 percent of the City's obligation using tax increment as the source of funds to make the lease payments. The Agency contends that the agreement is an enforceable obligation as it meets the exception under HSC section 34171 (d) (2). This section states that written agreements entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations. Based on our review, although the Assignment Agreement was entered into before December 31, 2010 and for the sole for the purpose of securing or repaying indebtedness obligations, it was not entered into at the time of issuance of the indebtedness obligations as required in HSC section 34171 (d) (2). Therefore, this item is not an enforceable obligation.

- Item No. 7 – Mike Thompson, Owner Participation Agreement (OPA) in the amount of \$1,157,702 is not allowed. Finance continues to deny this item. The Agency refers to the OPA as a Ground Lease, which was between the City and Mike Thompson's Recreational Vehicle (MTRV). Finance initially denied this item because the former RDA was not a party to the agreement.

The Agency contends the Ground Lease, dated July 18, 2002 between the City and MTRV (Ground Lease), in conjunction with the Agency Payment Agreement, dated July 16, 2002 between the City and the former RDA, creates an obligation of the Agency to MTRV. However, under the Ground Lease, it is the City's obligation to pay the tenant or MTRV fifty percent (50%) of the sales tax generated from the tenant's Fountain Valley sales operations if the total amount exceeds \$300,000.

However, based on our review, the Ground Lease's reference to the City's agreement with the former RDA does not create an obligation of the Agency owed to the tenant. In fact, Section 3.4 of the Ground Lease specifically provides that the former RDA's obligations to the City under the Agency Payment Agreement do not impact or impair the City's obligations to pay the tenant. Additionally, the fact that the former RDA owed no obligation to the tenant is further demonstrated by the tenant's remedies if the tenant did not receive amounts owed under the Ground Lease from the City. Section 3.4 of the Ground Lease states that if the City is "unable for any reason (for example, as a result of the application an existing or new law...)" to pay the tenant its share of the sales tax, the tenant could offset rents owed to the City, or the tenant could treat amounts owed by the City as a Tenant Improvement allowance to be paid in installments by the City for tenant improvements that were to be paid by the tenant. Section 3.4 provides no remedies against the former RDA.

Further, the obligation owed by the former RDA to the City under the Agency Payment Agreement has been invalidated by Dissolution Law. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the former RDA and the former RDA are not enforceable obligations. Therefore, this item is not an enforceable obligation.

- Item No. 17 – Legal Services in the amount of \$25,000 have been reclassified to the administrative cost allowance (ACA), and therefore, claimed administrative costs exceed the allowance by \$25,000. Pursuant to HSC section 34171 (d) (1) (F) (i), legal expenses related to civil actions, including writ proceeding, contesting the validity of the dissolution law, or challenging acts taken pursuant to the dissolution law shall only be payable out of the ACA.

Additionally, HSC section 34171 (b) (2) limits fiscal year 2015-16 administrative expenses to three percent of the RPTTF funds allocated to the Redevelopment Obligation Retirement Fund for the fiscal year or \$250,000. The Orange County Auditor-Controller distributed \$125,000 for the July through December 2015 period, thus leaving a balance of \$125,000 available for the January through June 2016 period. Although \$125,000 is claimed for ACA, Item No. 17 for Legal Services in the amount of \$25,000 is considered a general administrative cost and should be counted toward the cap. Therefore, \$25,000 of excess administrative costs is not allowed.

- Item No. 18 – Housing Successor Entity Administrative Cost Allowance in the amount of \$150,000 is not allowed. Finance continues to deny this item. Pursuant to HSC section

34177 (p), the housing entity administrative cost allowance is applicable only in cases where the city, county, or city and county that authorized the creation of the redevelopment agency elected to not assume the housing functions. Because the housing entity to the former redevelopment agency of the City is the City-formed Housing Authority (Authority) and the Authority operates under the control of the City, the Authority is considered the City under Dissolution Law. Therefore, \$150,000 of housing entity administrative allowance is not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.

Finally, although the administrative costs claimed are within the fiscal year administrative cap pursuant to HSC section 34171 (b) (2), Finance notes the oversight board has approved an amount that appears excessive given the number and nature of the obligations listed on the ROPS. HSC section 34179 (i) requires the oversight board to exercise a fiduciary duty to the taxing entities. Therefore, Finance encourages the oversight board to use adequate discretion when evaluating the administrative resources required to successfully wind-down the Agency.

Pursuant to HSC section 34186 (a) (1), the Agency was required to report on the ROPS 15-16B form the estimated obligations versus actual payments (prior period adjustment) associated with the January through June 2015 period (ROPS 14-15B). HSC section 34186 (a) (1) also specifies the prior period adjustment self-reported by the Agency is subject to review by the county auditor-controller (CAC). The amount of RPTTF approved in the table below includes the prior period adjustment resulting from the CAC's review of the Agency's self-reported prior period adjustment.

Except for the items denied in whole or in part or the item that has been reclassified, Finance is not objecting to the remaining items listed on your ROPS 15-16B. If you disagree with Finance's determination with respect to any items on your ROPS 15-16B, except for those items which are the subject of litigation disputing Finance's previous or related determinations, 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 \$821,715 as summarized in the Approved RPTTF Distribution table below:

Approved RPTTF Distribution	
For the period of January through June 2016	
Total RPTTF requested for non-administrative obligations	5,174,983
Total RPTTF requested for administrative obligations	125,000
Total RPTTF requested for obligations on ROPS 15-16B	\$ 5,299,983
Total RPTTF requested for non-administrative obligations	5,174,983
<u>Denied Items</u>	
Item No. 4	(2,820,856)
Item No. 7	(1,157,702)
Item No. 18	(150,000)
	(4,128,558)
<u>Reclassified Item</u>	
Item No. 17	(25,000)
Total RPTTF authorized for non-administrative obligations	\$ 1,021,425
Total RPTTF requested for administrative obligations	125,000
<u>Reclassified Item</u>	
Item No. 17	25,000
Administrative costs in excess of the cap (see Admin Cost Cap table below)	(25,000)
Total RPTTF authorized for administrative obligations	\$ 125,000
Total RPTTF authorized for obligations	\$ 1,146,425
ROPS 14-15B prior period adjustment	(324,710)
Total RPTTF approved for distribution	\$ 821,715

Administrative Cost Cap Calculation	
Total RPTTF for 15-16A (July through December 2015)	1,011,926
Total RPTTF for 15-16B (January through June 2016)	1,021,425
Less approved unfunded obligations from prior periods	0
Total RPTTF for fiscal year 2015-2016	2,033,351
Administrative cost cap for fiscal year 2015-16 (Greater of 3% of Total RPTTF or \$250,000)	250,000
Administrative allowance for ROPS 15-16A (July through December 2015)	(125,000)
Remaining administrative cost cap for ROPS 15-16B	125,000
ROPS 15-16B administrative obligations after Finance adjustments	(150,000)
Administrative costs in excess of the cap	\$ (25,000)

On the ROPS 15-16B form, the Agency reported cash balances and activity for the period January 1 through December 31, 2015. Finance will perform a review of the Agency's self-reported cash balances on an ongoing basis. Please be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved obligations, HSC section 34177 (l) (1) (E) requires these balances be used prior to requesting RPTTF.

Please refer to the ROPS 15-16B schedule used to calculate the total RPTTF approved for distribution:

<http://www.dof.ca.gov/redevelopment/ROPS>

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, 2016. This determination

only applies to items when 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 ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items 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 available prior to the enactment of the redevelopment dissolution statutes. 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 Agency in the RPTTF.

Please direct inquiries to Nichelle Thomas, Supervisor or Alexander Watt, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Ms. Jane Carlson, Consultant, Rosenow Spevacek Group, Inc.
Mr. Frank Davies, Property Tax Manager, Orange County