DEPARTMENT OF FINANCE

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December 18, 2012

Ms. Ramona Castañeda, Fiscal Services Manager
City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832-1775

Dear Ms. Castañeda:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 19, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Fullerton Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on September 4, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 19, 2012. 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 November 15, 2012.

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 No. 8 in the amount of $6.25 million of Redevelopment Property Tax Trust Fund (RPTTF) funding. Finance is allowing the item to remain listed on the ROPS at this time, but is reducing the funding amount to $0. The Agency indicated that the requested amount is an estimate for which no bids have been received and no contracts have entered. Therefore, Finance concludes that no RPTTF funding is needed for the upcoming six month period. As to the validity of the original agreement, Finance continues to review the document and any associated documents. Finance will opine on whether it is a valid enforceable obligation during the subsequent ROPS period.

- The following items are for agreements and contracts executed by the City, not the redevelopment agency (RDA). Therefore, the following items in the amount of $5 million continue to be denied by Finance and are not enforceable obligations:

    - Item No. 12 in the amount of $650,000 of bond proceeds
    - Item No. 15 in the amount of $4.4 million of bond proceeds

  However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- Item No. 14 – Amerige Court Disposition and Development Agreement (DDA) in the amount of $100,000. Finance continues to deny the item. Finance denied the item as HSC section 34163 (c) prohibits a RDA from amending or modifying existing agreements, obligations, or commitments with any entity for any purpose after June 27, 2011. It is our understanding the agreement was amended on February 7, 2012, and the costs requested are associated with that amendment. Therefore, this item is not an enforceable obligation and not eligible for RPTTF funding. To the extent these costs are associated with the original agreement that was entered into prior to June 27, 2011, the Agency may resubmit it on the subsequent ROPS for reconsideration.

- Item No. 16 in the amount of $98,000 RPTTF funding. Finance continues to deny the item. The City of Fullerton (City) entered into a Cooperative Agreement with Orange County Transportation Authority (OCTA) on July 20, 2010, to define the roles and responsibilities related to the funding between the City and OCTA for the construction of the project. The Cooperative Agreement was between City and OCTA, the former RDA was not a party to the agreement, and the City is ultimately responsible for payment/fulfillment. Therefore, the item is not an enforceable obligation.

- Item No. 18 in the amount of $1.3 million RPTTF funding. Finance continues to deny the item. The grant agreement provided is between the City and the Department of Conservation. The former RDA is not a party to the agreement, nor could they be a party to the agreement as it was signed after June 27, 2011. Therefore, this is not an obligation of the Agency. The Agency contends the item is an enforceable obligation because there is a cooperation agreement between the City and the former RDA entered into on January 25, 2011, which obligates the Agency to pay for the match requirements of the grant. However, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Additionally, the receipt of a grant in and of itself is not an enforceable obligation as defined under the law, as the receipt of a grant does not typically obligate the grantee to perform. Failure to perform merely results in the return of the grant to the grantor. Therefore, the item is not an enforceable obligation.

- Item No. 19 in the amount of $14 million RPTTF funding. Finance continues to deny the item. The contract provided is dated March 8, 2011, and is between the City and a third party. The former RDA is not a party to the contract. The Agency contends the item is an enforceable obligation because a cooperation agreement between the City and the former RDA was entered into on January 25, 2011, which obligates the Agency to pay for the contract. However, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, the item is not an enforceable obligation.

- Item No. 20 – City/Agency Agreement in the amount of $1.5 million. Finance continues to deny the item. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, this item is not an enforceable obligation and not eligible for RPTTF funding.

- Item Nos. 21 and 22 in the amount of $47.7 million of bond proceeds. Finance continues to deny the items at this time. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. Finance continues to maintain that the items do not have valid contracts executed prior to June 27, 2011, for anticipated projects or project work. Therefore, the items are not enforceable obligations at this time. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

During the Meet and Confer Session, the Agency requested that Finance amend the ROPS III form and add two additional items related to housing administrative costs and due diligence reviews, which were not considered during our initial review. Unfortunately, Finance will not amend the ROPS III form. To the extent the Oversight Board believes the issues in question are enforceable obligations, they can approve it for inclusion on the subsequent ROPS form for Finance review. However, the Agency should also be aware that maintenance and/or administrative costs associated with the former RDA's previous housing functions are not enforceable obligations. 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 any on-going maintenance and administrative costs. To conclude that such costs should be on-going enforceable obligations of the successor agency would require a transfer of tax increment for life – directly contrary to the wind down directive in ABx1-26/AB1484.

The Agency's maximum approved RPTTF distribution for the reporting period is $5,111,567 as summarized below.

Approved RPTTF Distribution Amount For the period of January through June 2013		
Total RPTTF funding requested for obligations	$	14,387,035
Less: Six-month total for items denied or reclassified as administrative cost		
Item 8		2,750,000
Item 14		25,000
Item 16		45,000
Item 18		330,468
Item 19		5,800,000
Item 20		500,000
Total approved RPTTF for enforceable obligations	$	4,936,567
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		175,000
Total RPTTF approved:	$	5,111,567

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the 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.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. 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 January 1 through June 30, 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 questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

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