



December 18, 2012

Ms. Lori Ann Farrell, Director of Finance
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648-2702

Dear Ms. Farrell:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 11, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Huntington Beach Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 27, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 11, 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 28, 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 item being disputed.

- Item No. 1 – City loan in the amount of \$5.7 million. Finance continues to deny the item at this time. Finance denied the item as this loan was created through a Cooperative Agreement in 2009. The amount of \$5.3 million in “Set Aside funds” is pledged through a 2009 Cooperative Agreement. The funds were to be used to make payments for the 2000 A Lease Revenue Bonds, which have since been defeased. In addition, the requirement for “Set Aside funds” ended with the dissolution of the former redevelopment agency (RDA) and HSC section 34171 (d) (2) states that agreements between the city and the former RDA are not enforceable obligations. The Agency contends the item is an enforceable obligation because in 1984, the City of Huntington Beach's Park Acquisition & Development Fund advanced \$1,740,834 to the former RDA to acquire the Emerald Cove property as evidenced by a Promissory Note between the City of Huntington Beach (City) and the former RDA. Per HSC section 34171 (d) (2), loan agreements entered into between the RDA and the city, county, or city and county that created it, within two years of the date of creation of the RDA, or solely for the purpose of securing or repaying indebtedness obligations may be deemed to be enforceable obligations. Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. 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 currently not an enforceable obligation and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.

- Item No. 12 – Payment for a Lease Revenue Refunding Bond in the amount of \$3.6 million. Finance continues to deny the item at this time. Finance denied the item as this bond is secured solely through lease payments, and there is no requirement to repay this bond with tax increment. HSC section 34183 (2) (B) states RPTTF can fund revenue bonds, but only to the extent the revenue pledged is insufficient to make payments, and only where the agency's tax increment revenues were also pledged for repayment. The Agency contends the item is an enforceable obligation because at the time the former RDA purchased the Emerald Cove property from the City, a promissory note was issued for the remaining debt service payable due on the bond. Section 203 of the Cooperation Agreement pledges tax increment funds for payment of bond debt service payments for the Emerald Cove 2010 Series A Lease Revenue Bond. HSC section 34171 (d) (2) 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. Although the Cooperation Agreement is solely for the purpose of securing or repaying indebtedness obligations, it was not entered into at the time of issuance of the indebtedness obligations. The Cooperation Agreement is dated May 18, 2009 and the Lease Revenue Refunding Bonds were dated May 13, 2010. Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. 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 currently not an enforceable obligation and not eligible for RPTTF funding.
- Item No. 17 – Pacific City project development agreement in the amount of \$6.5 million Low and Moderate Income Housing Fund. 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. The Agency contends the item is an enforceable obligation because \$6.5 million in the Low and Moderate Income Housing Fund (LMIHF) was encumbered for the production of affordable housing relating to the development located on Pacific Coast Highway and commonly known as the Pacific City project resulting from entitlements issued for the Pacific City project in 2004. However, obligations associated with the former RDA's previous statutory housing obligations 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 statutory 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, this item is not an enforceable obligation.
- Finance continues to deny Items 18 and 22. Finance denied the items as HSC section 34176 (a) (1) states that 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 Huntington Beach Housing Authority (Authority) assumed the housing

functions, the administrative costs associated with these functions are the responsibility of the housing successor. Furthermore, HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011.

- Item No. 18 – Amerinational Community Services Inc. contract for housing compliance monitoring inspection services in the amount of \$75,000. Because the contract with Amerinational Community Services Inc. was executed on July 28, 2011, this item is not an enforceable obligation and not eligible for RPTTF funding.
- Item No. 22 – Jessica Latham, Esquire contract for housing legal services in the amount of \$30,000. Because the contract with Jessica Latham, Esquire was signed on March 6, 2012, this item is not an enforceable obligation and eligible for RPTTF funding.

The Agency contends the items are enforceable obligations because it retained the obligation to assure that sufficient funds would be available to carry out the former RDA's housing functions, including administrative costs incurred by the Authority in its capacity as the successor housing entity to the former RDA. However, obligations associated with the former RDA's previous statutory housing obligations 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 statutory 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, the items are not enforceable obligations.

- Item Nos. 41 through 49 – Loan payments to the Agency totaling \$60.4 million. Finance continues to deny the items at this time. Finance denied the items as these are for projects previously completed by the former RDA using funds borrowed from the City and 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. The Agency contends the items are enforceable obligation because these are costs incurred by the former RDA for direct land purchases and relocation expenses as set forth in various Cooperation Agreements between the City and the former RDA. However, per HSC section 34171 (d) (2), loan agreements entered into between the RDA and the city, county, or city and county that created it, within two years of the date of creation of the RDA, or solely for the purpose of securing or repaying indebtedness obligations may be deemed to be enforceable obligations. Finance has not issued a Finding of Completion to the Agency; therefore, the provisions of HSC section 34171 apply. 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, these items are currently not enforceable obligations and not eligible for RPTTF funding.
- Finance reclassified the following line-items as administrative costs, which exceeded the administrative allowance by \$259,574:
 - Item No. 27 – Unused employee leave in the amount of \$124,391.

- o Item No. 33 – Van Horn Consulting in the amount of \$5,000.
- o Item Nos. 38 and 39 – Kane, Ballmer & Berkman legal services in the amount of \$13,993.
- o Item No. 40 – Keyser Marston consulting services in the amount of \$150,000.

The Agency contends the items are enforceable obligations because it includes payment of leave balances of the former RDA employees, litigation expenses for City of Palmdale et al. v. Matosantos, and consulting services to assist the Agency in its wind-down of former RDA affairs. The following categories are specifically excluded from the administrative cap as defined by HSC section 34171 (b):

- o Any litigation expenses related to assets or obligations.
- o Settlements and judgments.
- o The costs of maintaining assets prior to disposition.
- o Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs.

Finance no longer reclassifies Items 27 and 38 as administrative costs. Item 27 totaling \$124,391 is an allowable expense under HSC section 34171 (d) (1) (C) as it is a cost incurred to fulfill collective bargaining agreements for layoffs or terminations of city employees. Item 38 totaling \$13,993 is an allowable expense since it is litigation expenses related to assets or obligations. Therefore, Items 27 and 38 are enforceable obligations. However, Items 33, 39, and 40 do not fall into any of the categories specifically excluded from the administrative cap. Therefore, these items continue to be reclassified as administrative costs.

HSC section 34171 (b) limits fiscal year 2012-13 administrative expense to three percent of property tax allocated to the successor agency or \$250,000, whichever is greater. As a result, Huntington Beach is eligible for \$304,106 in administrative expenses. Therefore, \$233,358 of the claimed \$537,464 is not an enforceable obligation.

In addition, per Finance's ROPS letter dated October 11, 2012, the following item not disputed by the Agency continues to be denied:

- Item No. 32 – City loan repayment in the amount of \$283,211. 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. This shall remain the case until and unless a Finding of Completion is issued by Finance and the oversight board makes a finding that the loan was for legitimate redevelopment purposes pursuant to HSC section 34191.4 (b).

The Agency's maximum approved Redevelopment Property Tax Trust Fund distribution for the reporting period is \$7,012,392 as summarized below:

| Approved RPTTF Distribution Amount For the period of January through June 2013 | |
|-------------------------------------------------------------------------------------------|---------------------|
| Total RPTTF funding requested for obligations | \$ 11,915,468 |
| Less: Six-month total for items denied or reclassified as administrative cost | |
| Item 1 | 442,905 |
| Item 12 | 404,932 |
| Item 18 | 75,000 |
| Item 22 | 30,000 |
| Item 32 | 21,319 |
| Item 33* | 5,000 |
| Item 39* | 75,000 |
| Item 40* | 100,000 |
| Item 41 | 296,498 |
| Item 42 | 345,786 |
| Item 43 | 238,685 |
| Item 44 | 1,005,122 |
| Item 45 | 23,176 |
| Item 46 | 5,875 |
| Item 47 | 27,339 |
| Item 48 | 1,138,686 |
| Item 49 | 971,859 |
| Total approved RPTTF for enforceable obligations | \$ 6,708,286 |
| Plus: Allowable RPTTF distribution for administrative cost for ROPS III | 304,106 |
| Total RPTTF approved: | \$ 7,012,392 |

* Reclassified as administrative cost.

| Administrative Cost Calculation | |
|------------------------------------------------------------------------------------|----------------------|
| Total RPTTF for the period July through December 2012 | \$ 3,428,586 |
| Total RPTTF for the period January through June 2013 | 6,708,286 |
| Total RPTTF for fiscal year 2012-13: | \$ 10,136,872 |
| Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or \$250,000) | 304,106 |
| Administrative allowance for the period of July through December 2012 | 0 |
| Allowable RPTTF distribution for administrative cost for ROPS III: | \$ 304,106 |

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Szalay', with a long, sweeping underline.

STEVE SZALAY
Local Government Consultant

cc: Ms. Kellee Fritzal, Deputy Director of Economic Development, City of Huntington Beach
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office