



May 17, 2013

Ms. Sherri Holman, Finance Director
City of Fountain Valley Successor Agency
10200 Slater Avenue
Fountain Valley, CA 92708

Dear Ms. Holman:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS 13-14A) letter dated April 11, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Fountain Valley Successor Agency (Agency) submitted a ROPS 13-14A to Finance on February 25, 2013 for the period of July through December 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 April 29, 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 No. 7 – Mike Thompson, Owner Participation Agreement (OPA) in the amount of \$3,085,530. The Agency refers to the OPA as a Ground Lease. Finance denied the item because the Ground Lease, was executed on July 18, 2002 between the City of Fountain Valley (City) and Mike Thompson (the tenant). The former Redevelopment Agency (RDA) was not a party to the agreement. Finance continues to deny this item.

During the Meet and Confer process, further documentation and information was provided. The Agency contends the Ground Lease between the City and the tenant and the Agency Payment Agreement between the City and the RDA dated July 16, 2002 creates an obligation of the Agency owed to the tenant. However, under the Ground Lease, it is the City's obligation to pay the tenant fifty percent (50%) of the sales tax generated from the tenant's Fountain Valley sales operations if the total amount exceeds \$300,000. The Ground Lease's reference to the City's agreement with the 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 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 RDA owed no obligation to the tenant is further shown 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 provides that if the tenant did not receive amounts owed by the City, 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 RDA.

Thus, the only obligation owed by RDA was to the City under the Agency Payment Agreement. However, HSC 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.

- Item No. 12 – 2003 Certificates of Participation in the amount of \$12,233,382. Finance denied this item as an enforceable obligation in our letter dated December 18, 2012. Finance continues to deny this item at this time. 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.

The COPS were issued in 2003 and the Assignment Agreement was entered into in December 2009. As a result, the Assignment Agreement was not entered into at the time of issuance of the COPS. 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.

- County Auditor-Controller (CAC) ROPS II prior period adjustment in the amount of \$2,434,256 – This amount was self-reported by the Agency in ROPS 13-14A. The Agency contends that as a result of the Low and Moderate Income Housing Fund and Other Funds and Accounts Due Diligence Reviews, the excess funds were remitted to the Orange CAC and is no longer available. As verified with the CAC report and the documentation provided by the Agency, the CAC ROPS II prior period adjustment amount is now zero. Finance has revised the table below to reflect the adjustment.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. 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 July through December 2013. Finance's determination is effective for this time period only and should not be conclusively relied on 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 Agency's maximum approved RPTTF distribution for the reporting period is \$2,066,340 as summarized below:

Approved RPTTF Distribution Amount	
For the period of July through December 2013	
Total RPTTF funding requested for obligations	\$ 3,018,321
Minus: Six-month total for item denied	
Item 7	375,000
Item 12	701,981
Total approved RPTTF for enforceable obligations	\$ 1,941,340
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	125,000
Minus: ROPS II prior period adjustment	-
Total RPTTF approved for distribution:	\$ 2,066,340

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the

CAC and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment. Please refer to the worksheet used by the CAC to determine the audited prior period adjustment for the Agency:

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

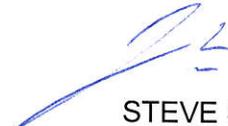
This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not 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 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 Wendy Griffe, Supervisor or Medy Lamorena, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Jim Simon, RSG (Consultant)
Mr. Frank Davies, Property Tax Manager, County of Orange
California State Controller's Office