DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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May 16, 2014

Mr. Jeffrey Parker, City Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780

Dear Mr. Parker:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated April 11, 2014. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Tustin Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 14-15A) to Finance on February 27, 2014, for the period of July through December 2014. Finance issued a ROPS determination letter on April 11, 2014. 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 30, 2014.

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. 18 – Town Center Housing Deficit Reduction Plan in the amount of $976,042. Finance continues to deny this item. During the Meet and Confer process, the Agency contended that a Finding of Completion should have been issued May 15, 2013 and provided an Oversight Board resolution approving the repayment schedule for this item. This item is related to the former Redevelopment Agency (RDA) deferring payments into the Low and Moderate Income Housing Fund (LMIHF) from fiscal years 1986-87 through 1992-93 pursuant to HSC section 33334.6. However, the provisions of HSC section 33334.6, including the obligations imposed, depend on the allocation of tax increment and was rendered inoperative by HSC section 34189. Therefore, there is no obligation and this line item is not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.

- Item Nos. 35 and 71 – Agreements with the City of Tustin (City) totaling $42,328,170. Finance continues to deny these items. The Public Works Agreement between the City and the former RDA in the amount of $25,934,993 and the Affordable Housing Reimbursement Agreement between the City and the former RDA in the amount of $16,393,177 were entered into on June 7, 1993 and June 5, 2007, respectively. Finance initially 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's creation date or for

issuance of indebtedness to third-party investors or bondholders. These agreements were entered into after the first two years of the former RDA's creation and are not associated with the issuance of debt. Upon receiving a Finding of Completion from Finance and after the oversight board makes a finding the loans were for legitimate redevelopment purposes, HSC section 34191.4 (b) may cause such items to be enforceable in future ROPS periods. During the Meet and Confer process, the Agency contended that a Finding of Completion should have been issued May 15, 2013 and provided Oversight Board resolutions making findings that the agreements were for legitimate redevelopment purposes.

For Item No. 35, the Agency was unable to provide the original executed Public Works Agreement. HSC section 34191.4 (b) (1) specifically states that loan agreements entered into...shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes. Without the original loan agreement that was actually entered into, it is unclear how the oversight board could make such a finding. Furthermore, the unexecuted copy that was provided is a reimbursement agreement, not a loan agreement. The City did not loan any funds to the former RDA, rather the City incurred expenditures on various projects and requested the former RDA to reimburse the costs incurred. Therefore, Item No. 35 is not an enforceable obligation and is not eligible for RPTTF funding.

For Item No. 71, the Agency provided the Affordable Housing Reimbursement Agreement with two amendments. However, under the amended agreement, the City did not loan any funds to the former RDA, rather the City provided gap financing to affordable homebuyers with promissory notes and requested the former RDA to reimburse the City for the amount of gap financing provided. Therefore, Item No. 71 is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 90 – Housing Entity Administrative Cost Allowance in the amount of $143,404. Finance continues to deny this item. Finance denied this item because pursuant to HSC section 34171 (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 (RDA) elected to not assume the housing functions. Because the housing entity to the former RDA 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 (ABx1 26 and AB 1484).

  The Agency contends that the City elected not to retain the housing functions, but the Authority, as a separate legal entity from the City, did retain the housing functions pursuant to HSC section 34176 (b) (3) and should therefore be eligible for the housing entity administrative allowance. However, pursuant to HSC section 34167.10 (a), the definition of "city" includes, but is not limited to, any reporting entity of the city for purposes of its comprehensive annual financial report (CAFR), any component unit of the city, or any entity controlled by the city or for which the city is financially responsible or accountable. HSC section 34167.10 (a) defines "city" for purposes of all of Dissolution Law, which includes HSC section 34171, as amended by AB 471, and HSC section 34176. The Authority is included in the City's CAFR, which identifies the Authority as a component unit of the City and states that the City is financially accountable for the component units.

Although the Authority is a separate legal entity from the City, HSC section 34167.10 (c) states that it shall not be relevant that the entity is formed as a separate legal entity. It should also be noted that HSC section 34167.10 (c) goes on to state that "the provisions of this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part [Part 1.8] and Part 1.85...and any attempt to determine otherwise would thwart the intent of these two parts." Therefore, based on our review, the City, by way of the Authority, elected to retain the housing functions pursuant to HSC section 34176 (a) and is not eligible for $143,404 of housing entity administrative allowance.

In addition, per Finance's letter dated April 11, 2014, we continue to deny the following item not contested by the Agency during the Meet and Confer:

- Claimed administrative costs exceed the allowance by $179,314. HSC section 34171 (b) limits the fiscal year 2014-15 administrative expenses to three percent of property tax allocated to the Agency or $250,000, whichever is greater. Although $429,314 is claimed for administrative cost, only $250,000 is available pursuant to the cap. Therefore, $179,314 of excess administrative cost is not allowed.

During our review, which may have included obtaining financial records, Finance determined the Agency possesses funds that should be used prior to requesting RPTTF. Pursuant to HSC section 34177 (l) (1) (E), RPTTF may be used as a funding source, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. The Agency provided financial records that displayed available Other Funds totaling $110,679.

Therefore, with the Agency's concurrence, the funding source for the following item has been reclassified to Other Funds and in the amount specified below:

- Item No. 1 – Housing Tax Allocation Bonds, Series 2010 in the amount of $1,293,703. The Agency requests $1,293,703 from RPTTF; however Finance is reclassifying $110,679 to Other Funds. This item is an enforceable obligation for the ROPS 14-15B period. However, the obligation does not require payment from property tax revenues and the Agency has $110,679 in available Reserve Balances. Therefore, Finance is approving RPTTF in the amount of $1,183,024 and the use of Other Funds in the amount of $110,679, totaling $1,293,703.

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS 14-15A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2013 period. HSC section 34186 (a) also specifies 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 table below includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Except for the items denied in whole or in part as enforceable obligations or for the item that has been reclassified, Finance is not objecting to the remaining items listed on your ROPS 14-15A. The Agency's maximum approved RPTTF distribution for the reporting period is $4,628,727 as summarized below:

Approved RPTTF Distribution For the period of July through December 2014		
Total RPTTF requested for non-administrative obligations		14,310,462
Total RPTTF requested for administrative obligations		572,718
Total RPTTF requested for obligations	**$**	**14,883,180**
Total RPTTF requested for non-administrative obligations		**14,310,462**
Denied Items		
Item No. 18		(976,042)
Item No. 35		(5,190,371)
Item No. 71		(3,304,253)
		(9,470,666)
Total RPTTF for non-administrative obligations		**4,839,796**
Cash Balances - Item reclassified to other funding sources		
Item No. 1		(110,679)
		(110,679)
Total RPTTF authorized for non-administrative obligations	**$**	**4,729,117**
Total RPTTF requested for administrative obligations		**572,718**
Denied Item		
Item No. 90		(143,404)
		(143,404)
Administrative costs in excess of the cap (see Admin Cost Cap table below)		(179,314)
Total RPTTF authorized for administrative obligations	**$**	**250,000**
Total RPTTF authorized for obligations	**$**	**4,979,117**
ROPS 13-14A prior period adjustment		(350,390)
Total RPTTF approved for distribution	**$**	**4,628,727**
Administrative Cost Cap Calculation		
Total RPTTF for non-administrative obligations		4,839,796
Percent allowed pursuant to HSC 34171 (b)		3%
Total RPTTF allowable for administrative obligations		**145,194**
Total RPTF administrative costs after Finance adjustments		250,000
Administrative costs in excess of the cap	**$**	**179,314**

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. During the ROPS 14-15A 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 14-15A 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 14-15B.

Please refer to the ROPS 14-15A schedule that was used to calculate the approved RPTTF amount:

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

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2014. This determination only applies 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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Jerry Craig, Economic Development & Housing Manager, City of Tustin
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office