

May 15, 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

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated April 12, 2015. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Fountain Valley Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 15-16A) to Finance on February 27, 2015, for the period of July through December 2015. Finance issued a ROPS determination letter on April 12, 2015. Subsequently, the Agency requested a Meet and Confer session on one or more of the determinations made by Finance. The Meet and Confer session was held on April 23, 2015.

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 determinations being disputed.

- Item No. 4 – 2003 Certificates of Participation in the amount of \$8,178,672. 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. During the Meet and Confer process, the Agency contended 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 \$757,702. 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.

During the Meet and Confer process, the Agency contended 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.

In addition, per Finance's letter dated April 12, 2015, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

- Item No. 1 – 1998 Tax Allocation Bonds (TABs) debt service payment in the amount of \$1,942,185. It is our understanding the amount requested is the final bond payment, due January 1, 2016. According to information provided to Finance, the Agency has \$1,963,541 in a Reserve Account as of June 30, 2014, specifically held for the 1998 TABs. However, the Agency could not provide sufficient documentation that indicates the Reserve Account cannot be used for the final bond payment. To the extent the Agency can provide suitable documentation which indicates the Reserve Account is otherwise legally restricted and unable to be used for the final bond payment, the Agency may be able to obtain Redevelopment Property Tax Trust Funds (RPTTF).

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS 15-16A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2014 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 review of the Agency's self-reported prior period adjustment.

Except for the items denied in whole or in part, Finance is not objecting to the remaining items listed on your ROPS 15-16A. The Agency's maximum approved RPTTF distribution for the reporting period is \$1,036,808 as summarized in the Approved RPTTF Distribution table below:

<b>Approved RPTTF Distribution For the period of July through December 2015</b>	
Total RPTTF requested for non-administrative obligations	6,374,574
Total RPTTF requested for administrative obligations	125,000
<b>Total RPTTF requested for obligations on ROPS</b>	<b>\$ 6,499,574</b>
<b>Total RPTTF requested for non-administrative obligations</b>	<b>6,374,574</b>
<b>Denied Items</b>	
Item No. 1	(1,942,185)
Item No. 4	(2,662,761)
Item No. 7	(757,702)
	<u>(5,362,648)</u>
<b>Total RPTTF authorized for non-administrative obligations</b>	<b>\$ 1,011,926</b>
<b>Total RPTTF requested for administrative obligations</b>	<b>125,000</b>
<b>Total RPTTF authorized for administrative obligations</b>	<b>\$ 125,000</b>
<b>Total RPTTF authorized for obligations</b>	<b>\$ 1,136,926</b>
ROPS 14-15A prior period adjustment	(100,118)
<b>Total RPTTF approved for distribution</b>	<b>\$ 1,036,808</b>

Please refer to the ROPS 15-16A 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, 2015. 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 the 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 agency in the RPTTF.

Pursuant to HSC section 34177 (a) (3), only those payments listed on an approved ROPS may be made by the successor agency from the funds specified in the ROPS. However, if the Agency needs to make payments for approved obligations from another funding source, HSC section 34177 (a) (4) requires the Agency to first obtain oversight board approval.

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) 445-3274.

Sincerely,



JUSTYN HOWARD  
Program Budget Manager

cc: Mr. Jim Simon, Consultant, Rosenow Spevacek Group, Inc., City of Fountain Valley  
Mr. Frank Davies, Property Tax Manager, Orange County  
California State Controller's Office

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