

Attachment 1

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DISCUSSION OF STAFF EFFORTS TO ADDRESS DOF CONCERNS

The East Garrison Project is a mixed use residential development project that is the subject of a Disposition and Development Agreement (DDA) approved by the former Redevelopment Agency in 2005. The Project consists of a mixed use development of up to 1,470 dwelling units (including low- and moderate-income housing); approximately 34,000 square feet of commercial, retail and community uses; the rehabilitation of historic structures; and the development of certain public facilities, including a fire station, library and Sheriff sub-station, and requires Agency financial assistance to pay for a portion of certain aspects of the Project, including public facilities, affordable housing and historic preservation and renovation. The Project also contemplates that the Agency shares in any profits achieved by the developer above Project Costs.

In 2007, development of the East Garrison Project slowed and the developer (East Garrison Partners LLC) invoked “force delay” provisions of the DDA. In 2009, East Garrison Partners LLC’s private lender foreclosed, and a new entity, East Garrison UCP LLC (UCP) acquired the loan. After undertaking due diligence, UCP finally agreed to become the replacement Master Developer under the DDA pursuant to a First Implementation Agreement. The First Implementation Agreement was approved by the Agency on the morning of June 28, 2011, which happened to be the day before the effective date of the Dissolution Act (ABx1 26). The Agency had full authority to enter into the First Implementation Agreement when it was approved.

After enactment of the Dissolution Act, the Agency obligations for the East Garrison DDA were identified in every Recognized Obligation Payment Schedule (ROPS) prepared by the Agency and Successor Agency. Although the Department of Finance objected to a proposed payment pursuant to the East Garrison DDA in October, 2014 (ROPS 14-15B), asserting that the DDA had terminated when the private loan was foreclosed upon. DOF rescinded that determination in November, 2014, acknowledging the validity of the DDA.

The Successor Agency’s ROPS 15-16A (July – December 2015), approved by the Oversight Board on February 17, 2015, also listed payments for East Garrison DDA work. ROPS 15-16A was approved without objection by the DOF in March 2015.

However, DOF rejected the Successor Agency’s ROPS 15-16B (January – June 2016), which was approved by the Oversight Board on September 23, 2015. Although DOF continued to acknowledge the validity of the DDA, it asserts that the First Implementation Agreement was invalid because the DOF contends the former Agency did not have authority to enter into that agreement. DOF suggested, however, that the Oversight Board could approve the formal assignment of the DDA to East Garrison UCP LLC pursuant to Health and Safety Code section 34181, by which an oversight board has the authority to direct a successor agency to “determine whether any contracts, agreements or other arrangements between the dissolved redevelopment agency and any private parties should be terminated or renegotiated to reduce liability and increase net revenues to the taxing entities.”

Accordingly, in January of this year, the Successor Agency and the Oversight Board each adopted resolutions that specifically considered and ratified the First Implementation Agreement. Unfortunately, the DOF continued to reject the agreement, and in discussions related to the DOF’s denial of East Garrison funding under the ROPS 16-17, the DOF asserted that it would not approve any “amendment” or other agreement related to an enforceable obligation unless that amendment also included a reduction in the amount of financial obligation of the Successor Agency.

Although DOF has rejected the ROPS 16-17 submitted in March, the law does allow for successor agencies to seek adjustments to ROPS. The time to submit such adjustments is October 1, 2016. In its continuing efforts to seek cooperation from the DOF, staff has negotiated this Amended and Restated First Implementation Agreement with UCP East Garrison LLC.

Development under the East Garrison DDA has proceeded by UCP under the terms and conditions of the DDA. As of the time of this proposed action, over 254 market rate residential units plus 61 affordable housing rental units, have been developed and occupied. Failure of the Successor Agency to abide by the terms of the DDA will threaten the future development of the Project and would result in these households (as well as those currently under contract and under construction) being essentially stranded in the middle of an undeveloped community. Additionally, the entire East Garrison community was designed to be self-sufficient, but such self-sufficiency relies upon the completion of all three phases of the Project

The East Garrison Project is being developed on land that was not previously subject to property taxes because it was part of a former federal military base. The entire Fort Ord Redevelopment Plan was the subject of special legislation that made legislative allocations of property tax revenues. Accordingly, affected taxing entities are not having pre-existing tax revenue streams being “diverted” and would not be receiving any revenues but for the development of the East Garrison Project through the promises made in the DDA. Further, any Successor Agency financial assistance is limited only to the property taxes generated by the East Garrison Project itself. As such additional property taxes coming from other redevelopment project areas, such as the Boronda and Castroville-Pajaro redevelopment project areas, will continue to flow to affected taxing entities and will not be used for the East Garrison Project.