



December 17, 2013

Ms. Donna Mullally, Manager of Fiscal Services
City of Irvine
1 Civic Center Place
Irvine, CA 92623

Dear Ms. Mullally:

Subject: Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letter dated November 6, 2013. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Irvine Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14B) to Finance on September 25, 2013, for the period of January through June 2014. Finance issued a ROPS determination letter on November 6, 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 November 18, 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. 10 – Rutan & Tucker, LLP Legal Services in the amount of \$125,000. Finance no longer denies this item. Finance initially denied the item as no documentation was provided to support the amounts claimed. During the Meet and Confer process, the Agency provided additional documents showing that the Agency is currently a party to three lawsuits and provided a breakdown of the cost estimate for the upcoming six-month period. HSC section 34171 (b) provides that contracts involving litigation are enforceable obligations. Therefore, this item is eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding.
- Item No. 13 – Amended Development Agreement in the amount of \$1,430,000,000. Finance continues to deny this item. This item was previously denied following the Meet and Confer sessions held on November 27, 2012 and April 22, 2013. Finance initially denied this item as HSC section 34177.3 (a) states that successor agencies shall lack the authority to, and shall not, create new enforceable obligations or begin new redevelopment work, except in compliance with an enforceable obligation that existed prior to June 28, 2011. Currently, there are no contracts in place and therefore, no enforceable obligations existed prior to June 28, 2011. While the Development Agreement was entered into prior to June 28, 2011 by the former redevelopment agency (RDA), it is not specific as to the total amount to be committed to the project.

The Agency contends that the Development Agreement is the enforceable obligation that obligates the Agency to construct a park on the Great Park Property substantially in compliance with the Great Park Master Plan. However, Section 3.9.4 of the Development Agreement states that "the City acknowledges and agrees that it will construct a park on the Great Park Property." The "City" is defined as the City of Irvine. The Agency also contends that pursuant to Section 3.13 of the Development Agreement, the former RDA's obligations are the same as the City's obligations. However, it is unclear that this section places the financial obligations of the City under this agreement onto the former RDA. Specifically, in the Request for Irvine Redevelopment Agency Action presented to the former RDA Board on September 8, 2009 stated that "there is no identifiable direct impact to the Irvine Redevelopment Agency from entering into the Amended and Restated Development Agreement." Additionally, the resolution that was presented to the former RDA Board for approval only states that the Development Agreement "envisions inclusion of the Agency as a party, to ensure that the [former RDA] exercises its regulatory authority in a manner consistent with the rights and obligations agreed to by the City." The former RDA Board does not appear to have approved or pledged the use of the former RDA's tax increment funding to build a park or to assume any of the City's financial obligations under the Development Agreement. Therefore, this item is not an enforceable obligation and is not eligible for RPTTF funding.

- Item No. 14 - Affordable Housing Grant Agreement in the amount of \$470,000,000. Finance continues to deny this item. HSC section 34177 (d) requires that all unencumbered balances in the Low and Moderate Income Housing Fund be remitted to the county auditor-controller for distribution to the taxing entities. The agreement was to use Housing Set Aside Funds, which no longer exists.

Additionally, the grant agreement is between the former RDA and the City of Irvine (City) as defined by HSC section 34167.10. Specifically, the Irvine Community Land Trust (ICLT) was created by the City, there are overlapping governing boards in that the President of the ICLT is a member of the City Council, the ICLT performs functions customarily or historically performed by municipalities, and the ICLT is included in the City's CAFR and is identified as a component unit of the City in the CAFR. Although the ICLT 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. 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. Therefore, the grant agreement is between the City and the former RDA and is not an enforceable obligation pursuant to HSC section 34171 (d) (2).

Further, HSC section 34178 (a) states that a successor agency or an oversight board shall not exercise the powers granted by this subdivision to restore funding for an enforceable obligation that was deleted or reduced by the Finance pursuant to subdivision (h) of Section 34179 unless it reflects the decisions made during the meet and confer process with Finance or pursuant to a court order. This item was previously denied following Meet and Confer sessions held on November 27, 2012, and April 22, 2013.

- Finance initially determined that the Agency's claimed administrative costs exceeded the allowance by \$136,200. HSC section 34171 (b) limits the fiscal year 2013-14 administrative expenses to three percent of property tax allocated to the Agency or \$250,000, whichever is greater. The Orange County Auditor-Controller's Office distributed \$220,000 in administrative costs for the July through December 2013 period, thus leaving a balance of \$30,000 available for the January through June 2014 period. During the Meet and Confer process, the Agency stated that \$106,200 in administrative costs is being carried forward from the \$220,000 that was received during the ROPS 13-14A period as only \$113,800 of that amount would be expended by the end of the ROPS 13-14A period. Therefore, \$106,200 in requested administrative costs from the RPTTF is being reclassified to Reserve balances (i.e., RPTTF funding received during ROPS 13-14A), \$30,000 is approved for RPTTF funding for the period, and the remaining \$30,000 is not allowed as it exceeds the allowance.

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14B form the estimated obligations and actual payments (prior period adjustments) associated with the January through June 2013 period. HSC Section 34186 (a) also specifies that the 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 below table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period 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 13-14B. The Agency's maximum approved RPTTF distribution for the reporting period is \$1,235,748 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2014	
Total RPTTF requested for non-administrative obligations	8,745,500
Total RPTTF requested for administrative obligations	166,200
Total RPTTF requested for obligations	\$ 8,911,700
Total RPTTF requested for non-administrative obligations	8,745,500
Denied Items	
Item No. 13	(5,870,500)
Item No. 14	(1,250,000)
	<u>(7,120,500)</u>
Total RPTTF approved for non-administrative obligations	1,625,000
Total RPTTF allowable for administrative obligations (see Admin Cost Cap table below)	30,000
Total RPTTF approved for obligations	1,655,000
Total ROPS III Prior Period Adjustment	(419,252)
Total RPTTF approved for distribution	\$ 1,235,748
Administrative Cost Cap Calculation	
Total RPTTF for 13-14A (July through December 2013)	235,000
Total RPTTF for 13-14B (January through June 2014)	1,625,000
Total RPTTF for fiscal year 2013-14	1,860,000
Allowable administrative cost for fiscal year 2013-14 (Greater of 3% or \$250,000)	250,000
Administrative allowance for 13-14A (July through December 2013)	220,000
Allowable RPTTF distribution for administrative cost for ROPS 13-14B	30,000

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. Beginning with the

ROPS 13-14B period, Finance required successor agencies to identify fund balances for various types of funds in its possession. During our ROPS 13-14B 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 13-14B 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 14-15A.

Please refer to the ROPS 13-14B schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14B Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS_13-14B_Forms_by_Successor_Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2014. This determination applies only 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: Ms. Teri Washle, Finance Administrator, City of Irvine
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office