

April 13, 2016

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

Dear Mr. Parker:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Tustin Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period July 1, 2016 through June 30, 2017 (ROPS 16-17) to the California Department of Finance (Finance) on January 27, 2016. Finance has completed its review of the ROPS 16-17.

Based on a sample of line items reviewed and application of the law, Finance made the following determinations:

- Item No. 35 – Public Works Agreement/South Central Redevelopment Project in the total outstanding amount of \$25,934,993 is not allowed. Finance continues to deny this item. Pursuant to HSC section 34191.4 (b), loan agreements between the former redevelopment agency (RDA) and sponsoring entity may be placed on the ROPS if the following requirements are met: (1) the Agency has received a Finding of Completion; and (2) the Agency's Oversight Board approves the loan as an enforceable obligation by finding the loan was for legitimate redevelopment purposes.

The Agency received a Finding of Completion on May 15, 2013. However, Finance denied OB Resolution Nos. 14-03, 14-08, and 14-12 as an enforceable obligation (reconsidering, affirming and ratifying the Amended and Restated Public Works Agreement (Agreement) between the City of Tustin (City) and the Tustin Community Redevelopment (Agency) in the letters dated February 20, 2014, May 14, 2014, August 5, 2014, and December 7, 2015.

HSC section 34191.4 (b) (1) states that loan agreements between the Agency and the City shall be deemed enforceable obligations provided the oversight board makes a finding the loan was for legitimate redevelopment purposes. Although the Agency provided RDA and City Council meeting agendas and minutes which make certain findings regarding the Agreement, and authorizes the execution of the Agreement, the Agency was unable to provide the original executed Agreement. Without the original executed Agreement, it is unclear whether an agreement was ever made. Of note is the fact that the authorization to execute the agreement was subject to a final language review by the City Attorney's

Office. Based on the above it is unclear how the OB could make the required findings under HSC section 34191.4 or determine that an agreement exists.

Additionally, the Agreement contemplates the RDA paying the City for undertaking various public improvements. There was no transfer of money or real property from the City to the RDA, and as a result, the Agreement does not constitute a loan agreement under HSC section 34191.4 (b) (2) (A) or (B). Pursuant to HSC section 34191.4 (b) (2) (C), an agreement between the City and RDA can constitute a "loan agreement" if under that agreement the City "contracted with a third party on behalf of the former RDA for the development of infrastructure" and the RDA was obligated to reimburse the city for the payments made by the city to the third party.

Here, the Agreement does not provide that the City would contract with a third party on behalf of the RDA. In fact, the language of the Agreement suggests that the City would complete the work. For example, when discussing the costs of improvements that the RDA would pay for, the Agreement provides, "...it is understood that said amounts are estimates only and that the actual costs of any of the improvements will be determined at the time said Improvement is completed and closed out *by the City*." Therefore, as the Agreement does not meet the definition of "loan agreement" under HSC section 34191.4 (b) (2) (C), this item is not an enforceable obligation and is not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding in the amount of \$5,190,371.

- Item No. 72 – South Central Project Area Loan in the total outstanding obligation amount of \$4,650,000 is not allowed. Finance continues to deny this item. Pursuant to HSC section 34191.4 (b), loan agreements between the former RDA and sponsoring entity may be placed on the ROPS if the following requirements are met: (1) the Agency has received a Finding of Completion; and (2) the Agency's Oversight Board approves the loan as an enforceable obligation by finding the loan was for legitimate redevelopment purposes.

The Agency received a Finding of Completion on May 15, 2013. However, Finance denied OB Resolution Nos. 15-01 and 15-06 as an enforceable obligation (reconsidering, affirming and ratifying the Amended and Restated Working Capital Loan and Administrative Services Agreement between the City and the Agency to the Tustin Community RDA) in the letters dated March 19, 2015, July 14, 2015, and December 7, 2015.

Pursuant to HSC section 34191.4 (b) (2) (A), loan agreement means loans for money entered into between the former RDA under which the city, county, or city and county that created the former RDA transferred money to the former RDA for use by the former RDA for a lawful purposes, where the former RDA was obligated to repay the money it received pursuant to a required payment schedule.

Under the original Agreement dated June 17, 1996, the City was to provide the RDA funds to assist with carrying out programs budgeted for the 1996-97 fiscal year, and to provide administrative, planning, engineering, design, accounting and other services required, including direct and indirect overhead charges, to the RDA. It is our understanding this Agreement was renewed annually. On September 7, 2010, the Agreement was renewed

(Renewed Agreement) and identified a loan balance of \$6,885,200, of which \$4,650,000 was posted as a 'Claim on Cash' in the Agency's accounting records.

However, the Agency was unable to provide adequate documentation to support the receipt of funds from the City or the required payment schedule, and both the Agreement and subsequent Renewed Agreement appear to simply be reimbursement agreements for services provided by the City to the Agency, and not a transfer of money. As a result, the Agreement does not meet the definition of "loan agreement" under HSC section 34191.4 (b) (2) (A). Additionally, the Agreement does not meet the definition of "loan agreement" under HSC section 34191.4 (b) (2) (B) or (C), since there was no transfer of real property to the RDA and the City did not contract with a third party for the development of infrastructure under the Agreement.

In addition to seeking to repay the City under the Agreement pursuant to HSC section 34191.4, the Agency and oversight board attempted to amend the Agreement on January 27, 2015 (Amended Agreement) in order to affirm and document the on-going cooperative agreement regarding administrative and operational services and payment for services. The Agency and OB do not have authority to take this action, which is contrary to the express directives of Dissolution Law. As agreements between a former RDA and the city that created the RDA, the Amended Agreement is not an enforceable obligation under HSC section 34171 (d) (2). Pursuant to HSC section 34181 (b), the oversight board is required to direct the Agency to "cease performance in connection with and terminate all existing agreements that do not qualify as enforceable obligations".

Finance also notes the OB attempts to approve the Amended Agreement to allow interest from the effective date of the amendment, and to allow the compounding of interest at the Local Agency Investment Fund rate, compounded daily. However, even if the Agreement or its amendment were a "loan agreement" under HSC section 34191.4, HSC section 34191.4 (b) (3) (A) specifies the interest on the outstanding principal amount after the original effective date of the loan shall be recalculated from the date of origination as approved by the former RDA at a simple interest rate of three percent, and contains no provisions that would allow for daily compounding. Additionally, the OB does not have the authority to approve a different interest rate.

Finally, Finance notes that Section 2c of the Renewed Agreement, dated September 7, 2010, states the loan was to be repaid to the City, unless otherwise renewed by both parties, by August 31, 2011. Furthermore, Sections 2d and 3a state if no funds are available to the Agency to repay the sum of the loans, the money loaned and any accrued interest may be forgiven and need not be repaid to the City. For these reasons, neither the Agreement nor the Amended Agreement, as the South Central Project Area Loan, is an enforceable obligation. Therefore, the requested amount of \$1,169,327 is not eligible for RPTTF funding.

- Item No. 90 – Housing Entity Administrative Cost Allowance in the total outstanding obligation amount of \$600,000 is not allowed. Finance continues to deny this item. Finance denies 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 \$150,000 of housing entity administrative allowance on the ROPS.

- On the ROPS 16-17 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. 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 our review, which may have included obtaining financial records, Finance determined the Agency possesses funds that should be used prior to requesting RPTTF. Therefore, with the Agency's consent, the funding source for the following items has been reclassified to Other Funds, and in the amounts specified below:
  - Item Nos. 73 and 82 – Various Bond Legal Services totaling \$20,000. The Agency requested \$10,000 from RPTTF; however, Finance is reclassifying the entire amount to Other Funds. Pursuant to HSC section 34177 (l) (1) (E), Other Funds must be applied towards enforceable obligations prior to RPTTF. Therefore, Finance is only approving Other Funds for these items, in the amount of \$20,000 (\$10,000 + \$10,000).

Except for the items denied in whole or in part or for the items that have been adjusted, Finance is not objecting to the remaining items listed on your ROPS 16-17. If you disagree with Finance's determination with respect to any items on your ROPS 16-17, except for those items which are the subject of litigation disputing Finance's previous or related determinations, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet\\_and\\_confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's maximum approved RPTTF distribution for the reporting period is zero as summarized in the Approved RPTTF Distribution Table on Page 5 (See Attachment).

ROPS distributions will occur twice annually, one distribution for the July 1, 2016 through December 31, 2016 (ROPS A period), and one distribution for the January 1, 2017 through June 30, 2017 (ROPS B period) based on Finance's approved amounts. Since Finance's determination is for the entire ROPS 16-17 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 16-17 form, the Agency was not required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2015 through December 31, 2015 period (ROPS 15-16A). The Agency will report actual payments for ROPS 15-16A and ROPS 15-16B on the ROPS 18-19 form pursuant to HSC section 34186 (a) (1). A prior period adjustment will be applied to the Agency's future RPTTF distribution. Therefore, the Agency should retain any difference in unexpended RPTTF.

Please refer to the ROPS 16-17 schedule used to calculate the total RPTTF approved for distribution:

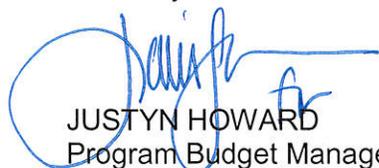
<http://www.dof.ca.gov/redevelopment/ROPS>

Absent a Meet and Confer, this is Finance's determination related to the enforceable obligations reported on your ROPS for the period July 1, 2016 through June 30, 2017. This determination only applies to items when funding was requested for the 12-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items 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 available prior to the enactment of the redevelopment dissolution statutes. 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.

Please direct inquiries to Nichelle Thomas, Supervisor, or Alexander Watt, Lead Analyst at (916) 445-1546.

Sincerely,

  
JUSTYN HOWARD  
Program Budget Manager

cc: Mr. Jerry Craig, Economic Development & Housing Manager, City of Tustin  
Mr. Frank Davies, Property Tax Manager, Orange County

Attachment

<b>Approved RPTTF Distribution</b>			
<b>For the period of July 2016 through June 2017</b>			
	<u>ROPS A Period</u>	<u>ROPS B Period</u>	<u>Total</u>
Requested RPTTF (excluding administrative obligations)	\$ 594,393	\$ 5,935,305	\$ 6,529,698
Requested Administrative RPTTF	0	0	0
<b>Total RPTTF requested for obligations on ROPS 16-17</b>	<b>594,393</b>	<b>5,935,305</b>	<b>\$ 6,529,698</b>
<b>Total RPTTF requested</b>	<b>594,393</b>	<b>5,935,305</b>	<b>6,529,698</b>
<u>Denied Items</u>			
Item No. 35	0	(5,190,371)	(5,190,371)
Item No. 72	(584,393)	(584,934)	(1,169,327)
Item No. 90	0	(150,000)	(150,000)
	(584,393)	(5,925,305)	(6,509,698)
<u>Reclassified Items</u>			
Item No. 73	(5,000)	(5,000)	(10,000)
Item No. 82	(5,000)	(5,000)	(10,000)
	(10,000)	(10,000)	(20,000)
<b>Total RPTTF authorized</b>	<b>0</b>	<b>0</b>	<b>\$ 0</b>
<b>Total Administrative RPTTF authorized</b>	<b>0</b>	<b>0</b>	<b>\$ 0</b>
<b>Total RPTTF approved for distribution</b>	<b>0</b>	<b>0</b>	<b>\$ 0</b>