



December 18, 2012

Ms. Lisa Kim
Acting Economic Development Manager
230 East Chapman Avenue
Orange, CA 92866

Dear Ms. Kim:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 1, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Orange Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 17, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 1, 2012. 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 Monday, October 22, 2012.

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 items being disputed.

- Item No. 30 – Metrolink Parking Structure employee costs in the amount of \$62,989. Finance denied the item as an enforceable obligation as the cost is associated with the construction of the Metrolink Parking Structure to be funded with unencumbered bond proceeds as of June 27, 2011. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into contracts with any entity after June 27, 2011. The Agency contends the item is an enforceable obligation because these are staffing costs associated with design of the Metrolink Parking Structure. Finance agrees that employee costs associated with a specific project are enforceable obligations per HSC section 34171 (b). However, this item is related to item 31, which is denied as specified below.
- Item No. 31 – Metrolink Parking Structure geotechnical services contract in the amount of \$65,000. Finance continues to deny this item. Finance denied the item as an enforceable obligation as the cost is associated with the construction of the Metrolink Parking Structure to be funded with unencumbered bond proceeds as of June 27, 2011. HSC section 34163 (b) prohibits a RDA from entering into contracts with any entity after June 27, 2011. The Agency contends the item is an enforceable obligation because HSC section 34177.3 (b) provides that successor agencies may create enforceable obligations to conduct the work of winding down the RDA and under this authority, the Agency may create enforceable obligations including legal services and consultant

services associated with wind down activities. However, 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 is no contract in place and therefore, no enforceable obligation exists prior to June 28, 2011. While a cooperative agreement for this project was entered into prior to June 28, 2011 by the former RDA and the Orange County Transportation Authority, it is not specific as to the contracts that must be entered into to carry out the project and/or the estimated amounts for those contracts. Furthermore, Article 7 (B) of the cooperative agreement states the agreement may be terminated upon 30 days written notice and either party shall be excused from performing its obligation if it is prevented from performing by an unforeseeable cause beyond its control.

- Item No. 45 – Affordable Housing Rental Loans anticipated legal services in the amount of \$75,000. Finance continues to deny this item. Finance denied the item as an enforceable obligation as there are no contracts in place for these services and HSC section 34163 (b) prohibits a RDA from entering into contracts with any entity after June 27, 2011. The Agency contends the item is an enforceable obligation because they are obligated under the loan agreements to ensure compliance with affordability covenants are maintained and HSC section 34177.3 (b) provides that successor agencies may create enforceable obligations to conduct work of winding down the RDA. Under this authority, the Agency asserts they may create enforceable obligations including legal services and consultant services associated with wind down activities. However, the Agency did not have contracts in place for the services prior to June 27, 2011 and the statute does not recognize contingent or unknown obligations. Thus, the creation of reserves for such items is not permitted. Furthermore, per HSC section 34176 (a) (1), if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county. Any costs associated with the affordable housing rental loans that were transferred to the housing successor agency are now the obligation of the housing successor agency and not the successor agency. Therefore, this item is not an enforceable obligation.
- Item No. 67 – Affordable Housing Rental Loans/Serrano House Project in the amount of \$7.1 million from the Low and Moderate Income Housing Fund. Finance continues to deny this item. Finance denied the item as an enforceable obligation as HSC section 34163 (b) prohibits a RDA from entering into contracts with any entity after June 27, 2011. While the statement of intent to issue a loan was executed on March 9, 2011, the actual loan agreement wasn't entered into until November 10, 2011 – well after the date on which all RDA authority to act had been suspended. The Agency contends the item is an enforceable obligation because the loan commitment is a legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy as defined in HSC sections 34167 (d) (5) and 34177 (d) (1) (E). However, the loan commitment did not obligate the RDA and, in fact, specifically required the RDA board to review the final loan terms and specifically gave the RDA board the discretion whether to approve the final loan prior to it being effective. With the reservation of final approval in the future, the loan commitment was merely an intent of the parties with no force or effect. Paragraph 5 of the commitment letter states:

"This letter is *not intended to describe* all of the requirements, terms, conditions and documents necessary for the Agency loan..... The final form of the Loan Agreement approved by Borrower shall be subject to the *discretionary approval of the Agency...*" [Emphasis added.]

This requires the loan documents to be prepared at a later date and consideration by the RDA Board after June 27, 2011. As such, this item is not an enforceable obligation.

In addition, per Finance's ROPS letter dated October 1, 2012, the following item not disputed by the Agency continues to be denied:

- Item No. 54 – Metrolink/Lemon Street Parking Structure for \$5.5 million of bond funds. There are no contracts to support the obligations. HSC section 34163 (b) prohibits a RDA from entering into contracts with any entity after June 27, 2011. Therefore, this item is not an enforceable obligation.

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is: \$11,879,375 as summarized below:

Approved RPTTF Distribution Amount For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 11,651,329
Less: Six-month total for items denied	
Item No. 30	31,494
Item No. 31	40,000
Item No. 45	50,000
Total approved RPTTF for enforceable obligations	<u>\$ 11,529,835</u>
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	<u>349,540</u>
Total RPTTF approved:	\$ 11,879,375

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the 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.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed

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on a future ROPS are subject to a subsequent review and may be denied even if it was or was not questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,



Steve Szalay
Local Government Consultant

cc: Ms. Barbara Messick, Economic Development Project Manager, City of Orange
Mr. Frank Davies, Orange County Auditor-Controller, Orange County
California State Controller's Office