



May 16, 2014

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 April 10, 2014. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Irvine Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 14-15A) to Finance on February 27, 2014, for the period of July through December 2014. Finance issued a ROPS determination letter on April 10, 2014. 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 April 28, 2014.

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. 13 – Amended Development Agreement in the amount of \$1,430,000,000. Finance continues to deny this item. This item was previously denied for the periods January through June 2013 (ROPS III), July through December 2013, (ROPS 13-14A), and January through June 2014 (ROPS 13-14B) following the Meet and Confer sessions held on November 27, 2012, April 22, 2013, and November 18, 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. While the Amended and Restated Development Agreement (Development Agreement) was entered into prior to June 28, 2011 by the former Redevelopment Agency (RDA), it is not specific as to the work to be completed or funded by the former RDA, if any. Additionally, there were no other contracts in place prior to June 28, 2011. Therefore, no enforceable obligation exists.

The Agency continues to contend 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 continues to contend that pursuant to Section 3.13 of the Development

Agreement, the former RDA's obligations are the same as the City's obligations; therefore, the former RDA has the same obligation as the City under Section 3.9.4 to construct a park. However, it is unclear that Section 3.13 places the City's financial obligations under the Development Agreement onto the former RDA. Specifically, 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 Redevelopment Property Tax Trust Fund (RPTTF) funding.

- Item No. 14 - Affordable Housing Grant Agreement (Grant Agreement) in the amount of \$470,000,000. Finance continues to deny this item. This item was previously denied for the ROPS III, ROPS 13-14A, and ROPS 13-14B periods following the Meet and Confer sessions held on November 27, 2012, April 22, 2013, and November 18, 2013. Finance initially denied this item as 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 Grant Agreement was to use Housing Set Aside Funds, which no longer exist.

Additionally, the Grant Agreement is between the former RDA and the City as defined by HSC section 34167.10. 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. Specifically, the Irvine Community Land Trust (ICLT) is included in the City's CAFR, which identifies the ICLT, a nonprofit corporation, as a component unit of the City and states that the City is financially accountable for the legally separate entity. Furthermore, the ICLT is controlled by the City because it was created by the City, there are overlapping governing boards in that two members of the ICLT's Board are members of the City Council, and the ICLT performs functions customarily or historically performed by municipalities, which are factors to be considered when determining if an entity is controlled by the city pursuant to HSC section 34167.10 (b).

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. 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 Finance's review, the ICLT meets all parts of the definition of "city" pursuant to HSC section 34167.10 (a). As such, 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.

- Item No. 15 – Re-entered 2007 Purchase and Sale and Financing Agreement in the amount of \$755,084. The Agency received a Finding of Completion on April 26, 2013. Pursuant to HSC section 34191.4 (b) (1), the Agency may place loan agreements between the former RDA and sponsoring entity on the ROPS, as an enforceable obligation, provided the oversight board makes a finding the loan was for legitimate redevelopment purposes. Additionally, HSC section 34191.4 (b) (2) (A) specifies this repayment to be equal to one-half of the increase between the ROPS residual pass-through distributed to the taxing entities in that fiscal year and the ROPS residual pass-through distributed to the taxing entities in the fiscal year 2012-13 base year.

According to the Orange County Auditor-Controller's report, the ROPS residual pass-through amount distributed to the taxing entities for fiscal year 2012-13 and 2013-14 are \$4,328,712 and \$3,337,781, respectively. Pursuant to the repayment formula outlined in HSC section 34191.4 (b) (2) (A), the maximum repayment amount authorized for fiscal year 2014-15 is \$0. Therefore, the requested loan repayment is not eligible for funding on this ROPS; however, the Agency may be eligible for funding in ROPS 15-16A.

During the Meet and Confer process, the Agency contended that this agreement is an enforceable obligation because the Agency and the City re-entered into the agreement with Oversight Board approval pursuant to HSC sections 34178 (a) and 34180 (h). While HSC section 34178 (a) and 34180 (h) authorizes successor agencies to reenter into agreements, any agreement reentered into cannot conflict with the requirements set forth in HSC section 34171 (d), as ABx1 26 did not specifically carve out an exception to the definition of an enforceable obligation nor did HSC section 34178 (a) or 34180 (h) not withstand HSC section 34171 (d). Therefore, the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation. Even if Finance did not object to the specific Oversight Board actions authorizing the Agency to reenter into agreements, the statute as a whole prohibits such an action from being validated if it conflicts with the definition of an enforceable obligation. Additionally, Finance has clearly defined authority under HSC section 34177 and 34179 (h) to review any items on ROPS to determine whether or not successor agencies are responsible for the obligation listed on their ROPS. Even if an Oversight Board approved an action to create an enforceable obligation, Finance has the authority to review the enforceable obligation for compliance with HSC section 34171 (d) or for compliance with any other statutory requirements contained in Chapter 26, Statutes of 2012 (AB 1484). At no time can an Oversight Board action eliminate Finance's authority to review an enforceable obligation as part of a ROPS review.

During our review, which may have included obtaining financial records, Finance determined the Agency possesses funds that should be used prior to requesting RPTTF. Pursuant to HSC section 34177 (l) (1) (E), RPTTF may be used as a funding source, but only to the extent no other funding source is available or when payment from property tax revenues is required by an enforceable obligation. The Agency provided financial records that indicated the prior period adjustment (PPA) amount for the ROPS II period exceeded the actual amount expended during the ROPS 13-14A period by \$226,138; therefore, the Agency has \$226,138 in available Reserve Balances.

The Agency did not object to the reclassification for the following item has been reclassified to Reserve Balances and in the amount specified below:

Item No. 4 – Implementation Agreement No. 1 in the amount of \$380,000. The Agency requests \$380,000 from RPTTF; however, Finance is reclassifying \$226,138 to Reserve Balances. This item is an enforceable obligation for the ROPS 14-15A period. However, the obligation does not require payment from property tax revenues and the Agency has \$226,138 in available Reserve Balances. Therefore, Finance is approving RPTTF in the amount of \$153,862 and the use of Reserve Balances in the amount of \$226,138, totaling \$380,000.

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS 14-15A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2013 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 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 14-15A. The Agency's maximum approved RPTTF distribution for the reporting period is \$79,543 as summarized below:

<b>Approved RPTTF Distribution</b>	
<b>For the period of July through December 2014</b>	
Total RPTTF requested for non-administrative obligations	62,657,726
Total RPTTF requested for administrative obligations	125,000
<b>Total RPTTF requested for obligations</b>	<b>\$ 62,782,726</b>
<b>Total RPTTF requested for non-administrative obligations</b>	<b>62,657,726</b>
<u>Denied Items</u>	
Item No. 13	(56,493,565)
Item No. 14	(2,659,161)
Item No. 15	(3,000,000)
	(62,152,726)
<u>Cash Balances - Item reclassified to other funding sources</u>	
Item No. 4	(226,138)
<b>Total RPTTF authorized for non-administrative obligations</b>	<b>\$ 278,862</b>
<b>Total RPTTF authorized for administrative obligations</b>	<b>\$ 125,000</b>
<b>Total RPTTF authorized for obligations</b>	<b>\$ 403,862</b>
Total ROPS 13-14A PPA	(324,319)
<b>Total RPTTF approved for distribution</b>	<b>\$ 79,543</b>

Please refer to the ROPS 14-15A 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, 2014. 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 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