



February 12, 2013

Brad Raulston, Executive Director
National City
1243 National City Blvd.
National City, CA 91950

Dear Mr. Raulston:

Subject: Westside Infill Transit Oriented Development

This letter is in response to your request for clarification and a review of the Department of Finance's (Finance) decisions related to the Westside Infill Transit Oriented Development (WI-TOD) project.

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of National City Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to Finance on August 16, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations, which included items 5 through 18 related to the WI-TOD project on October 7, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance on the ROPS III, including items 10 and 11, which are two of 14 line items related to the WI-TOD project. The Meet and Confer session was held on November 14, 2012.

Contrary to Agency's understanding, Finance has not denied the use of bond proceeds for the WI-TOD project. Pursuant to the Agency's ROPS III submittal, the Agency requested to use \$3.228 million in bond proceeds pursuant to items 5 and 16. Those line items were not objected to by Finance during our review of the Agency's ROPS III form. Additionally, Finance did not object to the expenditure of \$1.195 million in Low and Moderate Income Housing Funds associated with line items 9 and 12 through 18. In total Finance did not object to \$4.423 million in funding for the WI-TOD project for the upcoming six month period (January – June 2013).

However, Finance did object to items 10 and 11 on the Agency's ROPS III form. The Agency appropriately requested to Meet and Confer on those two items. After the Meet and Confer session Finance continued to deny items 10 and 11. The Agency contended that these items were in continuance of a Development and Disposition Agreement (DDA) between the former RDA and a third party dated June 21, 2011. Finance once again reviewed the specific DDA in order to ascertain whether the Agency's position was correct. Finance determined that the Agency was not required to perform the tasks associated with items 10 and 11; therefore, those items were determined to not be enforceable obligations and were not eligible for payment.

At a meeting on January 14, 2013, Finance agreed to clarify its position related to the WI-TOD project and once again re-review the DDA to determine if items 10 and 11 are required tasks that must be fulfilled by the Agency. The following is Finance's conclusion from our latest review:

Items 10 and 11 are for the "Purchase/Lease Replacement Yard" (Item 10) and "Building/Relocation Costs" (Item 11) in relation to the WI-TOD project. The Payee being the City of National City. The Paradise Creek Housing Partners DDA for the WI-TOD project is the DDA that has been cited by the Agency as being the enforceable obligation for Items 10 and 11. The Agency cites to environmental remediation sections and site clearance sections (duties owed for the benefit of the developer) as the requirements that obligates the funding of items 10 and 11.

In our re-review of the DDA and the sections specifically cited by the Agency we found that none of these sections impose a duty or obligation on the Agency to purchase/lease a replacement yard or pay for building/relocation costs for the City of National City. In fact, the City of National City is not a party to this agreement, nor a stated third party beneficiary. It is clear to Finance that the City of National City is not involved with this agreement.

Even though, based on descriptions provided by the Agency, it appears as though the development was contemplated being done on National City-owned land, this fact was not provided for in the DDA. There are no terms in the DDA that lay out the replacement of a public works yard or relocation costs that would be payable to the City of National City. Therefore, when determining the enforceability of items 10 and 11 the only conclusion that can be drawn is that these are discretionary actions and not enforceable obligations.

This letter constitutes our last review of Items 10 and 11 and hopefully clarifies Finance's position on the other Items related to the WI-TOD project.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Juan Perez, Senior Auditor and Controller Manager, San Diego County
California State Controller's Office