

The People are the City



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City Treasurer
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City Administrator
Troy L. Butzlaff, ICMA-CM

401 East Chapman Avenue – Placentia, California 92870

May 2, 2012

Mr. Mark Hill
Program Budget Manager
California Department of Finance
915 L Street
Sacramento, California 95814-3706

RE: RECOGNIZED OBLIGATION PAYMENT SCHEDULE SUBMITTED APRIL 16, 2012

Dear Mr. Hill:

The City of Placentia is in receipt of your correspondence dated April 27, 2012 listing items which, in the opinion of the Department of Finance (DOF), do not qualify as enforceable obligations. I would like to take this opportunity to respond to your correspondence and offer some additional information that will hopefully clarify any misunderstanding you may have concerning our Recognized Obligation Payment Schedule.

The City of Placentia, as Successor Agency, concurs with your Department's conclusion on Item 21. The item was included in the January column out of precaution and calculated for the amount due up to that time. As such, the City understands the requirement for the housing set aside ceased with the termination of the former agency.

Similarly, the City understands the limits to the administrative expenses and has amended its Recognized Obligation Payment Schedule accordingly. The former agency's calculation for administrative overhead was under review through a larger cost allocation study performed by the City. That study is recently concluded and the Successor Agency's administrative budget is below the \$250,000 level allowed by law.

With regard to Item 5, the Amended and Restated Reimbursement Agreement between the City and former Agency which is the basis for the 2003 Certificates of Participation (COP), the City takes great exception to DOF's position that this does not qualify as an enforceable obligation and requests further review by the DOF. By determining that this agreement is not an enforceable obligation, the DOF has essentially impaired a contractual obligation that has existed between the City and the former redevelopment agency since 1994. Under this agreement, the former redevelopment agency, through tax increment, pays the City 87.52% of the debt service obligation from the 2003 COP that the City issued. The full title of the COP as printed on the front page of the Official Statement is: "City of Placentia, Certificates of Participation (2003 Refunding and

Improvement Project) evidencing direct, undivided fractional interests in lease payments to be made by the City of Placentia, California as rental for certain property pursuant to a lease agreement with the Redevelopment Agency of the City of Placentia.”

The former Agency and the City entered into a 1994 Reimbursement Agreement to provide for repayment by the Agency to the City of the moneys paid as Lease Payments under and, as defined in, the 1994 Lease, in which the 1994 Lease and the 1994 COPs provided financing for the construction of certain public facilities generally consisting of storm drains and public street improvements which were of substantial benefit to the Amended Project Area. In May 2003, the City and Placentia Public Financing Authority entered into a 2003 Lease and the City issued the May 2003 COPs to refinance the 1994 COPs as well as make additional improvements within the boundaries of the City. In November 2003, the Agency and City entered into the November 2003 Lease (Amended and Restated Reimbursement Agreement) to prepay and discharge the May 2003 COPs and finance additional improvements. The Amended and Restated Reimbursement Agreement, therefore, was entered into at the time of the issuance and was based on the earlier agreements. At the time it was determined that 87.52% of the costs from the issuances were of substantial benefit to the Project Area. As stated in the recitals of the Agreement, the November 2003 COPs were issued to continue the rights and obligations set forth in the 1994 Reimbursement Agreement and subsequent agreements. The holders of the COPs were advised of this relationship in the Official Statement for the certificate issuance and the denial of this agreement destroys all security for the holders of the COPs. It should be underscored that Health and Safety Code § 34178 (b)(1) states:

“(b) Notwithstanding subdivision (a), any of the following agreements are **not invalid and may bind the successor agency**:

(1) **A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations.**” [emphasis added]

As specifically called out in the Amended and Restated Reimbursement Agreement, dated May 1, 2003 and amended and restated as of November 1, 2003, the lease agreement is a duly authorized, written agreement entered into at the time of issuance for the purpose of repaying indebtedness obligations and is therefore defined as an enforceable obligation.

The Department of Finance’s position that the Amended and Restated Reimbursement Agreement between the City and the Redevelopment Agency is not an enforceable obligation was the crux of the Motion for Injunctive Relief that was filed by the City of Cerritos, et.al. in State Superior Court earlier this year. The City was a participant in that suit. The argument made then, which the State vehemently denied would happen, was that AB1x 26 could be used to impair valid and binding contracts, including but not limited to bonds and typical lease-leaseback financing arrangements many cities,

including Placentia, have entered into for funding of capital facilities. Based upon DOF's determination that Item 5 is not an enforceable obligation has, in effect, impaired a contractual obligation and in doing so violates State and Federal law.

Accordingly, the City of Placentia requests a reversal of the determination that Item 5 is not an enforceable obligation. City Staff is available to review the item with appropriate Department of Finance Staff at your earliest opportunity. You may contact my Assistant City Administrator, Ken Domer, at (714) 993-8242 to arrange this meeting. I look forward to resolving this issue in the most expeditious manner.

Sincerely,



Troy L. Butzlaff ICMA-CM
City Administrator

C: City Council
Ken Domer, Assistant City Administrator

**AMENDED AND RESTATED
REIMBURSEMENT AGREEMENT**

by and between the

**REDEVELOPMENT AGENCY OF THE
CITY OF PLACENTIA**

and the

CITY OF PLACENTIA

Dated as of May 1, 2003

and

Amended and Restated as of November 1, 2003

AMEDED AND RESTATED REIMBURSEMENT AGREEMENT

THIS AMENDED AND RESTATED REIMBURSEMENT AGREEMENT, dated *nunc pro tunc* as of May 1, 2003 and amended and restated as of November 1, 2003, is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF PLACENTIA, a public body corporate and politic (the "Agency") and the CITY OF PLACENTIA, a charter city and California municipal corporation (the "City").

WITNESSETH:

WHEREAS, the Agency is a duly constituted redevelopment agency under the laws of the State of California and pursuant to such laws has duly proceeded with redevelopment activities within the Placentia Redevelopment Project (the "Project Area") within the City; and

WHEREAS, the redevelopment plan for the Project Area provides for tax increment financing in accordance with the provisions of Chapter 6, Part 1 of Division 24 of the California Health and Safety Code and Section 16 of Article XVI of the Constitution of the State of California; and

WHEREAS, the Agency is authorized, with the consent of the City Council of the City, to pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure or other improvements which are publicly owned within the Project Area, upon a determination by the Agency and said City Council that such buildings, facilities, structures or other improvements are of benefit to the Project Area; and

WHEREAS, when the value of such land or the cost of the installation and construction of such building, facility, structure or other improvement, or both, has been or will be paid or provided for initially by the City, the Agency may enter into a contract with the City under which it agrees to reimburse the City for all or part of the value of such land or all or part of the cost of such building, facility, structure or other improvement, or both, by periodic payments over a period of years; and

WHEREAS, the obligation of the Agency under such contract constitutes an indebtedness of the Agency for the purpose of carrying out the redevelopment project for the Project Area, which indebtedness may be made payable out of taxes levied in the Project Area and allocated to the Agency under subdivision (b) of Section 33670 of the California Health and Safety Code, or out of any other available funds; and

WHEREAS, pursuant to such authority, the Agency and the City entered into the 1994 Reimbursement Agreement to provide for repayment by the Agency to the City of the moneys paid as Lease Payments under and as defined in the 1994 Lease (each as hereinafter defined), in the amounts specified therein, which 1994 Lease and the 1994 Certificates provided financing for the construction of certain public facilities generally consisting of storm drains and public street improvements which were of substantial benefit to the Amended Project Area; and

WHEREAS, thereafter, the City and the Placentia Public Finance Authority entered into the May 2003 Lease and the City issued the May 2003 Certificates to (a) refinance the 1994

Certificates, and (b) to finance additional capital improvements within the geographical boundaries of the City (collectively, the "May 2003 Project"); and

WHEREAS, thereafter the Agency and the City entered into the November 2003 Lease and in November 2003 the City issued the November 2003 Certificates to (a) prepay and discharge the May 2003 Certificates, (b) finance additional capital improvements within the geographical boundaries of the City and (c) to finance certain other obligations (collectively the "November 2003 Project"); and

WHEREAS, the Agency and the City previously determined by resolution that the construction of the 1994 Project was of benefit to the Amended Project Area and have subsequently determined that 87.52% of the additional capital improvements and facilities and related costs funded as part of the May 2003 Project and the November 2003 Project are of substantial benefit to the Project Area; and

WHEREAS, the Agency and the City in consideration of their mutual undertakings, past and present, herein and otherwise, intended at the time the May 2003 Certificates were issued and at the time the November 2003 Certificates were issued to continue the rights and obligations set forth in the 1994 Reimbursement Agreement to provide for repayment by the Agency to the City of the moneys paid as "Lease Payments" as defined originally in the 1994 Lease and subsequently in the 2003 Lease and the November 2003 Lease (each as hereinafter defined) and to evidence that intent the Agency and the City desire to enter into this Amended and Restated Reimbursement Agreement *nunc pro tunc* in order to provide for such repayments up to the amounts specified in Exhibit A attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Amended and Restated Reimbursement Agreement and of any amendment hereto, and of any certificate, opinion, estimate or other document herein mentioned, have the meanings herein specified. Any capitalized term not defined herein shall have the meaning given to such term in the November 2003 Lease.

"1994 Certificates" means the Refunding Certificates of Participation dated April 1, 1994 in the aggregate principal amount of \$3,185,000 executed and delivered by the 1994 Trustee as defined in the 1994 Lease.

"1994 Lease" means that certain Amended and Restated Lease Agreement by and between the City and the Agency which was recorded on April 27, 1994 as Instrument No. 94-0289863 in the official records of the County of Orange.

"1994 Reimbursement Agreement" means that certain Reimbursement Agreement by and between the City and the Agency dated as of April 1, 1994.

"Agency" means the Redevelopment Agency of the City of Placentia, a redevelopment agency and public body, corporate and politic, exercising governmental functions and powers

and organized and existing under Chapter 2 of the California Community Redevelopment Law (the "Law," *California Health & Safety Code Section 33000 et seq.*)

"Business Day" means any day of the year other than a Saturday, Sunday or a day on which banks are authorized or required to be closed in the city in which the Trustee is located.

"City" means the City of Placentia, a charter city and municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of California.

"Fiscal Year" means each twelve-month period beginning on July 1 of any year and ending on June 30 of the succeeding year, or any other twelve-month period hereafter adopted by the City as its official fiscal year period.

"Law" means the Community Redevelopment Law of the State of California, constituting Part 1 of Division 24 of the California Health and Safety Code and the acts amendatory thereof and in supplement thereto. Whenever reference is made in this Amended and Restated Reimbursement Agreement to the Law, reference is made to the Law as in force on the date of the execution of this Amended and Restated Reimbursement Agreement, unless the context otherwise requires.

"Lease Payments" means all amounts paid by the City as lease payments pursuant to Section 4.4 of the November 2003 Lease.

"May 2003 Certificates" means the \$3,800,000 Taxable Convertible Certificates of Participation (2003 Capital Improvement Financing Project) executed and delivered by the 2003 Trustee on May 29, 2003 as defined in the May 2003 Lease.

"May 2003 Lease" means collectively, that certain Site and Facility Lease by and between the City and the Placentia Public Finance Authority dated May 1, 2003 and recorded on May 29, 2003 as Instrument No. 2003-0621922 in the official records of the County of Orange and that certain Lease Agreement by and between the City and the Authority dated as of May 1, 2003.

"Project Area" means the Placentia Redevelopment Project, as amended, consisting of approximately 278.25 acres comprised of the Original Project Area of approximately 180 acres adopted by City Ordinance No. 83-O-113 together with the approximately 95 acre added by Amendment No. 1 adopted by City Ordinance No. 90-O-115 (collectively, the "Amended Project Area") and the approximately 5.25 acres added by Amendment No. 2 adopted by City Ordinance No. O-2004-03.

"November 2003 Certificates" means the \$11,145,000 aggregate principal amount of the Certificates of Participation (2003 Refunding and Improvement Project) executed and delivered by the Trustee pursuant to the Trust Agreement and as defined in the November 2003 Lease.

"November 2003 Lease" means that certain lease entitled "Lease Agreement by and between the Agency, as Lessee and Sublessor, and the City, as Lessor and Sublessee, dated as of November 1, 2003".

“Tax Increment Revenues” means all taxes allocated to, and paid into a special fund of the Agency for the project Area pursuant to Article 6 of Chapter 6 of the Law and Section 16 of Article XVI of the Constitution of the State of California, and as provided in the redevelopment plan for the Project Area, including all payments and reimbursements, if any, to the Agency specifically attributable to ad valorem taxes lost by reason of tax exemptions and tax rate limitations, but excluding any amounts required to be paid to other taxing agencies pursuant to Sections 33401 or 33492.71 of the Law and any amounts required to be deposited in the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 of the Law.

“Trust Agreement” means that certain agreement entitled “Trust Agreement” by and amount the City, the Agency and the Trustee, dated as of November 1, 2003.

“Trustee” means U.S. Bank National Association, its successors and assigns, acting as trustee under the Trust Agreement, or any other entity then performing the function of Trustee under the Trust Agreement.

Section 2. Reimbursement; Other Payments. Subject to pledges of Tax Increment Revenues heretofore or hereafter made by the Agency, the Agency and the City agree that, to the extent necessary but only to the extent available as determined annually in the sole and absolute discretion of the Agency, and not in excess of the amounts specified in Exhibit A attached hereto and incorporated herein, in any Fiscal Year, Tax Increment Revenues shall be used and applied to repay the City for all current or previously unreimbursed Lease Payments made by the City to the Agency under the November 2003 Lease. Any Lease Payments or portions of Lease Payments made from the proceeds of the 1994 Certificates, the May 2003 Certificates or the November 2003 Certificates shall be deemed to have been made by the City. This Amended and Restated Reimbursement Agreement may be amended from time to time by the parties hereto for any purpose and with any effect whatsoever.

Section 3. Default by Agency. If the Agency has available Tax Increment Revenues and shall fail to repay the City or shall fail to pay any other payment required to be paid hereinunder at the time specified herein, and such failure shall continue for a period of ten (10) days, then the City or, if applicable, any assignee, shall be entitled to exercise any and all remedies available pursuant to law.

Section 4. Remedies Not Exclusive. No remedy herein conferred upon the City shall be exclusive of any other remedy and each and every remedy shall cumulative and shall be in addition to every other remedy given hereunder or hereafter conferred on the City.

Section 5. Prior Agreements Terminated. This Amended and Restated Reimbursement Agreement is intended to amend, restate and supercede in its entirety the 1994 Reimbursement Agreement such that 1994 Reimbursement Agreement shall be terminated and of no further force or effect.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Reimbursement Agreement as of the day and year first above written.

CITY OF PLACENTIA

By: 
Constance M. Underhill, Mayor

(SEAL)

Attest:


Patrick J. Melia, City Clerk

REDEVELOPMENT AGENCY OF THE
CITY OF PLACENTIA

By: 
Constance M. Underhill, Chairperson

(SEAL)

Attest:


Patrick J. Melia, Secretary

Approved as to Form:


Thomas F. Nixon, City Attorney