



May 14, 2013

Mr. Charles Adams, Finance and Administrative Services Director
City of Albany
Administration and Finance
1000 San Pablo Avenue
Albany, CA 94706

Dear Mr. Adams:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated April 9, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Albany Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 28, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on April 9, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 30, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Our review indicates that the former redevelopment agency (RDA) made two cash transfers totaling \$1,050,000 to the City of Albany (City): \$650,000 from the Capital Projects Fund and \$400,000 from the Debt Service Fund for various public improvement projects in accordance with a Cooperative Agreement (Agreement) between the City and the former RDA executed on January 17, 2011. The Agency contends the Agreement was a valid enforceable obligation that was entered into prior to the enactment of AB x1 26. However, HSC section 34179.5 (c) (2) states that the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former RDA prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. Therefore, the transfer was not made pursuant to an enforceable obligation and is not

permitted. As such, the transfer of the amount continues to be disallowed and the OFA balances available for distribution to the taxing entities is increased by for \$1,050,000.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- The Agency requested to retain \$87,201 for Recognized Obligation Payment Schedule for the period January 1, 2013 through June 30, 2013 (ROPS III) fiscal year 2012-13 obligations. These obligations will be paid with the Redevelopment Property Tax Trust Fund (RPTTF) distribution the Agency received from the Alameda County Auditor-Controller's office in January 2013. Therefore, the retention of the amount is not allowed. However, Finance noted that the county auditor-controller adjusted the ROPS III January 2, 2013 distribution for the prior period by \$4,721 pursuant to HSC section 34186 (a). Therefore, Finance is allowing the retention of \$4,721 in OFA balances in order to adequately fund approved ROPS III obligations. Consequently, we are adjusting the balance by \$82,480 (\$87,201 - \$4,721).

The Agency's OFA balance available for distribution to the affected taxing entities is \$1,169,178 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 36,698
Finance Adjustments	
Disallowed transfers	\$ 1,050,000
Disallowed balances retained for fiscal year 2012-13 obligations	82,480
Total OFA available to be distributed:	\$ 1,169,178

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable

obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor, or Derk Symons, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Judith R. Lieberman, Projects Director, City of Albany
Ms. Nicole Almaguer, City Clerk, City of Albany
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County Auditor-Controller
California State Controller's Office