



May 1, 2013

Ms. Dawn Merchant, Finance Director
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Dear Ms. Merchant:

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 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Antioch Successor Agency (Agency) submitted an oversight board approved OFA DDR to the Finance on January 14, 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 1, 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 10, 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:

- Transfers totaling \$871,458 are partially disallowed as discussed below:
 - Transfers made to the City of Antioch (City) totaling \$831,458 to fulfill a loan agreement between the California Department of Boating and Waterways, the City, and the Agency. The Agency contends the agreement is an enforceable obligation because the loan agreement and the debt repayment report obligated the former Redevelopment Agency (RDA) to repay the State Department of Boating and Waterways 1984 loan. Our review indicates the following:

According to documentation provided by the Agency, one payment totaling \$62,500 was made on January 1, 2011. Per HSC section 34179.5 (c), the payment should not have been included in the DDR, the Agency will be permitted to retain these funds and Finance is reversing its original adjustment to the OFA balance for this amount.

Per Article VIII of the Terms and Conditions of the 1984 agreement, payments on principal and interest shall be made in equal annual installments. According to documentation provided by the Agency, beginning in July 2003, the Agency made quarterly transfers of \$62,500;

however, on March 24, 2011, the Agency paid an additional \$456,458 payment. This amount will not be permitted because it was not made pursuant to the 1984 agreement. The Agency also made an additional \$62,500 payment although documentation provided shows that the outstanding balance should have been fully satisfied prior to the \$62,500 payment. Therefore, the OFA balance available for distribution will be increased by \$518,958 (\$456,458 + \$62,500).

Additionally, during the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 period (ROPS I) a \$250,000 payment was also made. Per Finance's May 27, 2012 letter, the amount due was pursuant to an amendment to the original agreement entered into after June 27, 2011 and was therefore denied. While the County Auditor Controller generally makes adjustments for disallowed expenditures pursuant to HSC section 34186 (a), no adjustment was made to reflect the disallowed expenditure; therefore, the OFA balance available for distribution will be increased by \$250,000 as this payment was not made pursuant to an enforceable obligation.

- Payments made for the Monitoring Wells Project totaling \$40,000. The Agency claims this item was approved on the ROPS I. Our review indicates the Agency was approved for and spent \$18,000 towards this item during the ROPS I period. Our review also indicates the remaining \$22,000 was paid in two installments in September and December 2011. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. 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. These payments were made pursuant to an agreement between the City and the former RDA after the first two years of the RDA's creation. Therefore, the transfers totaling \$22,000 was not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by \$22,000.
- The request to retain funds totaling \$12,705 is not allowed. The Agency claims the amounts were accrued during the ROPS I period for administrative expenses but were not paid until July 2012. Our review indicates that this is the case; however, per the Prior Period Payments worksheet on the January through June 2013 ROPS (ROPS III) period, the Agency exceeded the approved amount by \$12,925. Therefore, this payment was not made pursuant to an enforceable obligation and is not permitted. In addition, the County Auditor Controller did not offset the ROPS III distribution for the unapproved expenditure; therefore the OFA balance will be increased by the amount not approved for on ROPS I of \$12,925.
- The transfer for the Markley Creek project in the amount of \$1 million in bond proceeds is disallowed. Per HSC section 34179.5 (c) (2), 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 redevelopment agency prior to June 28, 2011 with a

third party other than the city, county, or city and county that created the former RDA, and indebtedness obligations as defined in subdivision (e) of Section 34171. However, for DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

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 adjustments are appropriate:

- Properties transferred to the City totaling \$2,457,484. These properties were not transferred for governmental use pursuant to HSC 34181 (a), as communicated in our Objection to Oversight Board letter dated November 2, 2012. However, for DDR purposes, the value of the transfer will not be considered when determining the amount available for distribution to the affected taxing entities because properties are not cash or cash equivalent. The Agency should reverse the improper transfer of properties, recover the assets from the City, and include these properties in its long-range property management plan which is to be submitted to Finance pursuant to HSC section 34191.5.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to \$1,033,783. (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 229,900
Finance Adjustments	
Add:	
Disallowed transfers	\$ 790,958
Request to retain balances not supported	12,925
Total OFA available to be distributed:	\$ 1,033,783

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 Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Lynn Tracy Nerland, City Attorney
Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office