



May 8, 2013

Ms. Debra Auker, Director of Administrative Services
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

Dear Ms. Auker:

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 Emeryville Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 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 25, 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:

- The Agency requested to retain balances for fiscal year 2012-13 obligations in the amount of \$22,144,085. Based on further review during the Meet and Confer process, the Agency may retain \$21,823,004 (\$10,199,546 + \$8,885,019 + \$2,738,439) for enforceable obligations, as further discussed below. Accordingly, the OFA balance available will be increased by \$321,081 (\$22,144,085 - \$21,823,004).
 - On the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) period, Finance approved \$8,827,693 and the County Auditor Controller (CAC) distributed \$8,954,249 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency received sufficient funds from RPTTF to cover all of its expenditures in the ROPS II period and no additional OFA balances need to be retained. Pursuant to HSC section 34186 (a), the CAC has calculated an \$872,587 adjustment to the Agency's June 1, 2013 RPTTF distribution for the July through December 2013 ROPS (ROPS 13-14A) period based on actual ROPS II period expenditures. Additionally, Finance approved and the Agency expended \$1,245,297 from OFA balances. Therefore, the Agency may retain \$10,199,546 (\$8,954,249 + \$1,245,297) for the ROPS II period.

- o For the January through June 2013 (ROPS III) period, Finance approved \$7,929,303 and the CAC distributed \$2,382,489 from RPTTF. The CAC made a \$5,546,814 adjustment for the January through June 2012 period (ROPS I) on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). Additionally, Finance approved \$3,338,205 to be expended from OFA balances. Therefore, the Agency may retain \$8,885,019 (\$5,546,814 + \$3,338,205) for ROPS III enforceable obligations.
- o For the July through December 2013 (ROPS 13-14A) period, Finance's April 15, 2013 ROPS letter approved \$16,393,098 to be disbursed from RPTTF and the CAC estimates \$13,701,956 will be available from RPTTF. This results in an estimated shortfall of \$2,691,142 (\$16,393,098 - \$13,701,956) for the ROPS 13-14A period. Additionally, Finance approved (e.g. the item was not denied or the funding source was not changed) Items 11, 24, 27, and 29 on ROPS 13-14A, which were listed as either Reserves or "Other" funding for a total of \$47,297. Therefore, the Agency may retain \$2,738,439 (\$2,691,142 + \$47,297) for ROPS 13-14A enforceable obligations.

Should any deficits occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected pursuant to HSC section 34177 (d) (1) (A), or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

- During the Meet and Confer process, the Agency stated that \$9,636,390 needs to be retained for hazardous materials remediation activities. However, it is not evident that future property tax revenues will be insufficient to cover these costs. The Agency did not provide a cash flow analysis to demonstrate an immediate need to retain these unencumbered OFA balances, nor did it show that available funding will be insufficient to cover the Agency's obligations.
- During the Meet and Confer process, the Agency is requesting to retain an additional \$18 million not reported as part of the DDR as the amount is the subject of ongoing litigation. Finance recognizes there is an ongoing lawsuit that may impact future ROPS requests. These amounts are already accounted for through other processes. Therefore, the amounts required for remittance to the affected taxing entities as identified in this letter is owed regardless of the outcome of the lawsuit.

The Agency's OFA balance available for distribution to the affected taxing entities is \$33,331,601 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 33,010,520
Finance Adjustments	
Requested retained balance not supported:	321,081
Total OFA available to be distributed:	\$ 33,331,601

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Paula Crow, Attorney, City of Emeryville
Ms. Carol S. Orth, Tax Analysis Division Chief, County of Alameda
California State Controller's Office