



May 9, 2013

Ms. Tina Rivera, City Finance Director  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

Dear Ms. Rivera:

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 8, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Goleta Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 24, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013, submittal deadline pursuant to HSC section 34179.6 (c), Finance was not bound to completing its review and making a determination by the April 1, 2013, deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on April 8, 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:

- Total amount of assets held as of June 30, 2012 should be \$5,407,716. The June 30, 2012 Comprehensive Annual Financial Report identified additional assets in the amount of \$566,176 that were not included in the DDR. Based upon further review during the Meet and Confer process, the \$566,176 variance is made up of \$192,195 in cash, \$95 in accounts receivable, and \$373,886 in deferred charges. The \$192,195 in cash was ordered to be remitted during the Low and Moderate Income Housing Fund DDR. The \$95 in accounts receivable and \$373,886 in deferred charges are non-cash or cash equivalent assets and not available for remittance. Therefore, Finance is making no changes to the OFA balance available to the taxing entities.
- Assets transferred to the City of Goleta (City) during the period of January 1, 2011 through June 30, 2012, in the amount of \$18,125,358 are not allowable. HSC section 34179.5 (c) (2) only allows transfers within this period that are required by an enforceable obligation or meet the definition of governmental use.

- Bond proceeds were transferred to the City in the amount of \$14,082,472. The agreements provided were entered into after June 27, 2011, by the City. In addition, the project on which the bond proceeds were expended has not been listed on a Recognized Obligation Payment Schedule (ROPS) for Finance's review to determine if an enforceable obligation exists. HSC section 34177 (a) (3) states that commencing on the date the ROPS is valid pursuant to subdivision (l) of HSC section 34177, only those payments listed in the ROPS may be made by the successor agency from the funds specified in the ROPS.

Furthermore, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency (RDA) or successor agency to the city, county, or city and county that created 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, and indebtedness obligations as defined in subdivision (e) of Section 34171. The Agency provided cooperation agreements between the City and 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. The Agency should recover the bond proceeds from the City. Since these are bond funds, Finance made no adjustments to the OFA balance available to the affected taxing entities.

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 bond proceeds requested for use were issued in March 2011.

- Cash in the amount of \$512,262 was transferred to the City for capital projects pursuant to a 2009 cooperation agreement. 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. The OFA balances available for distribution to the taxing entities will be increased by \$512,262.
- April 1, 2011 transfer for a cooperative agreement payment with the City in the amount of \$3,530,624 is not allowed. No documents received support that the transfer was required by an enforceable obligation. 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 loans were issued after the first two years of the RDA's creation. Therefore, the transfer was not made pursuant

to an enforceable obligation and is not permitted. The OFA balances available for distribution to the taxing entities will be increased by \$3,530,624.

The repayment of loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

The Agency's OFA balance available for distribution to the affected taxing entities is \$4,042,829 (see table below).

| <b>OFA Balances Available For Distribution To Taxing Entities</b> |                     |
|---|---------------------|
| Available Balance per DDR:  | \$ (57)             |
| Finance Adjustments   |                     |
| Add:  |                     |
| Disallowed transfers to the City of Goleta:                       | 4,042,886           |
| <b>Total OFA available to be distributed:</b>                     | <b>\$ 4,042,829</b> |

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.

Ms. Tina Rivera

May 9, 2013

Page 4

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. Jaime Valdez, Sr. Management Analyst, City of Goleta  
Mr. Robert W. Geis, Auditor/Controller, Santa Barbara County  
Mr. Ed Price, Division Chief Property Tax Division, Santa Barbara County  
California State Controller's Office