



May 5, 2013

Ms. Roberta Raper, Director of Finance
City of Grass Valley
125 East Main Street
Grass Valley, CA 95945

Dear Ms. Raper:

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 Grass Valley 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 17, 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:

- Asset transfers in the amount of \$7,321,879 consisting of \$1,193,681 in cash, \$4,540,000 in bond proceeds, and \$1,588,198 in property is disallowed. Our review noted several transfers of assets to the City of Grass Valley (City) listed in the Appendices 2A, 2B, 3A, and 3B of the DDR. These transfers took place during the period of January 1, 2011 through January 31, 2012, pursuant to the Cooperative Agreement dated January 17, 2011, between the City and the former Redevelopment Agency (RDA).

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 redevelopment agency 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. 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. The transfers were not made pursuant to an enforceable obligation and are not permitted. As such,

Finance continues to increase the OFA balance available by \$1,193,681, as further discussed below.

- Cash transferred to the City in the amount of \$498,681. Appendix 2A, Items 6 through 9, 11, and 12 are for various capital improvement projects, which were incurred as a result of a contract or invoice between the City and a third party, not the former RDA. While the Cooperative Agreement entered into January 17, 2011, identifies specific projects and amounts to be committed; many of the associated projects already had pre-existing contracts between the City and third parties. Since the City was the responsible party to fund the contracts, neither the former RDA nor the Agency should be assuming responsibility to fund the contracts. The Agency contends that the former RDA approved funds for the projects in their budget for fiscal year 2010-11; however, a budget is not a pledge of the former RDA's funds. The OFA balance available has been increased by a total of \$498,681, as further discussed below.
 - Appendix 2A, Item 6 for the Main Street Improvements Project totaling \$12,532. The project already had a pre-existing agreement between the City and a third party. Since the former RDA did not previously pledge funds to the project, the City was the responsible party to fund the agreement; neither the former RDA nor the Agency should be assuming responsibility to fund the agreement. Therefore, the OFA balance available will be increased by \$12,532.
 - Appendix 2A, Item 7 for the Downtown Streetscape Project totaling \$77,869. The City began the project in 2010; however, the former RDA did not previously pledge funds to the project and is not responsible for funding the project. Therefore, the OFA balance available will be increased by \$77,869.
 - Appendix 2A, Item 8 for the Bennett Street and East Main Street Entry Park Project totaling \$59. The City began the project in 2010; however, the former RDA did not previously pledge funds to the project and is not responsible for funding the project. Therefore, the OFA balance available will be increased by \$59.
 - Appendix 2A, Item 11 for the Upper Slide Ravine Infrastructure Project totaling \$216,701. This project was not listed in the 2011 Cooperative Agreement and the former RDA did not previously pledge funds to the project is not responsible for funding the project. Therefore, the OFA balance available will be increased by \$216,701.
 - During the Meet and Confer process, the Agency did not object to the adjustments made for Appendix 2A, Items 9 and 12, totaling \$191,520. Therefore, Finance continues to increase the OFA balance available by \$191,520.
- Transfers to the City in the amount of \$5,235,000. Appendix 3A, Items 1 and 2 are cash transfers from the Agency to the City to fund the Dorsey Drive Project. The Agency provided a Cooperative Agreement between the former RDA and the City dated January 17, 2011, for the Dorsey Drive Project. As stated above,

HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, which includes 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. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

Furthermore, the Agency provided a Funding Agreement dated in March 9, 2011, between the City and the Nevada County Transportation Commission (NCTC), which included a termination clause that states that..."in the event that the City is required to return the Funding Amount to the City of Grass Valley Redevelopment Agency, the City may terminate this Agreement and NCTC shall return any unexpended portion of the Funding Amount to the City." The City later entered into a three party Cooperative Agreement dated September 27, 2011, with Caltrans and NCTC to use the amounts described in the Funding Agreement. However, with the dissolution of the former RDA on June 27, 2011 and the absence of contractual obligations entered by the former RDA with a third party prior to this date, the City is required to return the funding amount transferred to NCTC back to the Agency. Of the \$5,235,000 transferred, Item 1 was funded by \$4,540,000 of bond proceeds, which is considered restricted cash and not available for disbursement to the taxing entities. Therefore, Finance is increasing the OFA balance available by \$695,000.

- Appendix 2A, Items 1 through 4 were properties transferred to the City in the amount of \$1,588,198. These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5. Since these are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities.
- Accounts payable in the amount of \$9,308. The Agency requested to retain balances for payment of salaries and benefits accrued during the January through June 2012 period, but not paid until the July through December 2012 period. The item was approved on ROPS I; therefore, the retention of the amount is allowed and the adjustment of \$9,308 is reversed.

Finance notes that amounts requested and approved in a Recognized Obligation Payment Schedule (ROPS) are effective only for the six-month period covered. To the extent the Agency does not expend funds approved and received on a ROPS until a subsequent period, the Agency should relist the unexpended amounts that need to be retained for those enforceable obligations on the subsequent ROPS with the funding source as "Reserves" or "Other" and an entry in the Notes section indicating the funds were received in a prior ROPS period.

The Agency's OFA balance available for distribution to the affected taxing entities is \$1,193,681 (see table on following page).

| OFA Balances Available For Distribution To Taxing Entities | |
|---|---------------------|
| Available Balance per DDR: | \$ - |
| Finance Adjustments | |
| Disallowed transfers (net of non-cash assets) | \$ 1,193,681 |
| Total OFA available to be distributed: | \$ 1,193,681 |

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.

Ms. Roberta Raper
May 5, 2013
Page 5

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Dan Holler, City Administrator, City of Grass Valley
Ms. Marcia L. Salter, Auditor-Controller, County of Nevada
California State Controller's Office