



REVISED

March 28, 2014

Mr. Jeff Crechriou, Acting Economic Development Manager
City of Marina Successor Agency
211 Hillcrest Avenue
Marina, CA 93933

Dear Mr. Crechriou:

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 May 24, 2013 and the revised letter dated February 17, 2014. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Marina Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on February 4, 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 20, 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 May 20, 2013.

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

- Adjustment to the June 30, 2012 balance in the amount of \$66,527. The Agency asserts the June 30, 2012 balance was overstated by \$66,527 due to an error made in preparation of the OFA DDR. The OFA balance available has been reduced by \$66,527. The Agency was able to document the inclusion of accrued salary, benefits, taxes, and payables, totaling \$66,527 in the balance as of June 30, 2012 was made in error. Therefore, the Agency's OFA balance available for distribution to the affected taxing entities has been reduced by \$66,527.
- Transfers totaling \$637,486 (\$586,326 + 51,160) continue to be denied, as further discussed below.
 - Transfer in the amount of \$586,326 to the City of Marina (City). The Agency contends this transfer is enforceable due to the 2006 City Council approval of an Assignment and Assumption Agreement. The Agency also contends this is an enforceable transfer because the California State Controller's Office (Controller) reviewed all the Agency's transfers and did not deny this transfer in the

February 2013 Asset Transfer Review. The Agency provided documentation which identifies that in 2006, the City Council approved the former redevelopment agency (RDA) to accept the City's rights to acquire the Fort Ord Reuse Authority (FORA) property in consideration for which the Agency would pay the City any land sales or lease proceeds received by the Agency from the sale or lease of FORA property.

However, although the City Council approved the assignment of FORA to the former RDA on September 6, 2006, the Agency was unable to provide an executed Assignment and Assumption Agreement. Our review of the documentation provided by the Agency does not indicate the Agency has a legal obligation to transfer the proceeds for the FORA property sale. Therefore, Finance continues to deny the transfer.

- o Transfer in the amount of \$51,160. The Agency contends this is a loan repayment related to the Telecommunications conduit loan agreement between the City and the former RDA that was approved by the Controller in the February 2013 Asset Transfer Review. However, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county or city and county that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for the issuance of indebtedness to third-party investors or bondholders.

As related to the two items noted above, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA 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. Further, 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 transfers were not made pursuant to an enforceable obligation and are not permitted.

- The Agency's request to retain \$1,039,485 to cover enforceable obligations is partially allowed. Based upon further review during the Meet and Confer process, the Agency may retain \$658,104 and the OFA balance available will be increased by \$381,381 (\$1,039,485 - \$658,104).

For the Recognized Obligation Payment Schedule (ROPS) period of July through December 2012 (ROPS II), Finance approved \$1,039,489 and the County Auditor Controller (CAC) distributed \$658,104 from the Redevelopment Property Tax Trust Fund (RPTTF). On the ROPS for the period July through December 2013 (ROPS 13-14A), the Agency reported and the CAC verified expenditures totaling \$472,776 (\$446,379 + \$26,397) funded by the RPTTF. Therefore, sufficient RPTTF was received to cover the expenditures during the ROPS II and the Agency may retain \$658,104 for the ROPS II period.

Should a deficit 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), 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.

- The Agency's request to retain \$1,133,766 in legally restricted assets to cover enforceable obligations is partially allowed. Based upon further review during the Meet and Confer process, the Agency may retain \$500,000 and the OFA balance available will be increased by \$633,766 ($\$39,500 + 284,715 + \$279,169 + \$30,382$), as further discussed below.
 - The request to retain \$539,500 for pass through payments to the Monterey Peninsula Unified School District (MPUSD) is partially approved. During the Meet and Confer process, the Agency was able to provide audited financial statements to validate what amounts are owed for the pass through payments that the former RDA had allegedly failed to pay pursuant to the agreements. Our review of the documentation provided identifies that the actual pass through amount owed to the MPUSD is \$509,119. For the January through June 2013 ROPS (ROPS III) period, Finance approved \$500,000 in "Other" funding for the MPUSD contractual pass through payment. Therefore, the Agency is allowed to retain \$500,000 to cover approved enforceable obligations during the ROPS III period.

However, the Agency is not allowed to retain the additional \$9,119 ($\$509,119 - \$500,000$) because the maximum amount that could be funded pursuant to HSC section 34177 (a) (3) is \$500,000. As such, the remaining amount of \$9,119 should be placed on a future ROPS for payment. The OFA balance available for distribution will be increased by \$39,500 ($\$539,500 - \$500,000$). Pursuant to HSC section 34183 (a) (1), the CAC is responsible for remitting from the RPTTF an amount equal to that would have been received pursuant to any pass through agreement between an Agency and taxing entity. Therefore, the Agency is no longer required to make future pass through payments in relation to the former RDA's agreements with MPUSD.

- Retention of \$284,715 for the repayment of the Supplemental Educational Revenue Augmentation Fund (SERAF) loan continues to be denied. The Agency contends that retention of funds for repayment of the SERAF loans is in accordance with HSC section 34171 (d) (1) (G) because it specifically authorizes repayment to commence in the 2013-14 fiscal year. Our review of HSC section 34176 (e)(6) (B) indicates that while ROPS 13-14A technically falls within fiscal year 2013-14, the repayment of these loaned amounts are subject to the repayment formula outlined in HSC section 34176 (e) (6) (B).

HSC section 34176 (e) (6) (B) allows this repayment to be equal to one-half of the increase between the ROPS residual pass-through distributed to the taxing entities in that fiscal year and the ROPS residual pass-through distributed to the taxing entities in the 2012-13 base year. Since the formula does not allow for estimates, the Agency must wait until the ROPS residual pass-through distributions are known for fiscal year 2013-14 before requesting funding for this obligation. Therefore, the Agency may be able to request funding for the

repayment of SERAF loans beginning with the July through December 2014 ROPS (ROPS 14-15A). As such, Finance continues to increase the OFA balance available by \$284,715.

- o Retention of \$279,169 for the repayment of a City loan continues to be denied. The Agency contends that the loan between the City and the former RDA is related to costs incurred by the City on the Agency's behalf related to development costs associated with the FORA agreement. As previously stated, 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. Finance continues to deny the retention of funds and the OFA balance available will be increased by \$279,169.
- o Retention of \$30,382 for underpayment of prior year's pass through payments to FORA continues to be denied. The Agency contends that this underpayment was identified in an audit of the pass through amounts paid to FORA and therefore balances should be retained. However, documentation provided was not sufficient to show the amount claimed amount is valid. Therefore, retention of OFA balances is not permitted. As such, the OFA balance available will be increased by \$30,382.

The Agency's OFA balance available for distribution to the affected taxing entities is \$1,219,589 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (366,517)
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance	\$ (66,527)
Disallowed transfers	\$ 637,486
Request to restrict funds for enforceable obligations	\$ 633,766
Request to retain balances not supported	\$ 381,381
Total OFA available to be distributed:	\$ 1,219,589

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 SCO 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, Dispute Resolution Supervisor, or Derk Symons, Analyst, at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. Layne Long, City Manager, City of Marina
Ms. Julie Aguero, Auditor Controller Analyst II, Monterey County
California State Controller's Office