



May 2, 2013

Mr. Thomas E. Lynch, Assistant City Manager
City of Norwalk
12700 Norwalk Boulevard
Norwalk, CA 90650

Dear Mr. Lynch:

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 March 27, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Norwalk 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 March 27, 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 15, 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:

- Cash transfers totaling \$4 million are disallowed. The former Redevelopment Agency (RDA) made cash transfers to the City of Norwalk for water infrastructure projects in the amount of \$1.1 million and \$2.9 million on January 28, 2011 and February 25, 2011, respectively. 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. 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 obligations, unless issued within two years of the RDA's creation date. The transfer was not made pursuant to an enforceable obligation and is not permitted. As these are related to legally restricted bond proceeds, the adjustments do not affect the OFA balance available for distribution to the taxing entities. However, an adjustment will be made to increase the restricted amount in procedure 6.

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.

- The Agency's request to retain \$6,039,882 in current unencumbered OFA balances to cover future obligations in Procedure 8 of the OFA DDR was not allowed. However, based on further review, Finance is reversing \$3,552,107 ($\$2,694,224 + \$12,569 + \$845,314$) of its adjustment, as discussed below. Accordingly, Finance is increasing the OFA balance available for remittance by \$2,487,775.

For the July through December 2012 ROPS period (ROPS II), Finance approved \$2,961,075 and the County Auditor Controller (CAC) distributed \$1,829,283 from the Redevelopment Property Tax Trust Fund (RPTTF). This resulted in a shortfall of \$1,131,792 for the ROPS II period. On the July through December 2013 ROPS (ROPS 13-14A), the Agency reported \$535,316 was expended from the OFA balances to cover the shortfall. Additionally, Finance approved and the Agency expended \$329,625 from the OFA balances in the ROPS II period. Therefore, the Agency may retain \$2,694,224 ($\$1,829,283 + \$535,316 + \$329,625$) for the ROPS II period.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

For the January through June 2013 ROPS period (ROPS III), Finance approved \$2,295,360 and the CAC distributed \$2,282,791 from the RPTTF. The CAC did not make any adjustments for the January through June 2012 period (ROPS I) on the ROPS III January 2, 2013 distribution pursuant to HSC section 34186 (a). As such, the Agency has a shortfall of \$12,569 for the ROPS III period. Therefore, the Agency may retain \$12,569 to ensure sufficient funds are available for the ROPS III period.

For the ROPS 13-14A, the Agency is requesting and Finance approved \$2,923,930 from the RPTTF (per Finance's April 10, 2013 ROPS letter). The CAC estimates that \$2,078,616 will be available to the Agency from the RPTTF. This results in an estimated shortfall of \$845,314. Therefore, the Agency may retain \$845,314 for the anticipated shortfall in the ROPS 13-14A period.

Should any further 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.

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 adjustment is appropriate:

- Loan receivable in the amount of \$750,000. The Agency is restricting \$750,000 under procedure 7 as a non-liquid asset; however, the promissory note dated December 4, 2007 indicates this loan receivable is payable one year after project completion. It is our understanding this project is currently on hold. Without definite repayment terms stated in the promissory note, this loan is not considered a non-liquid asset. Therefore, an adjustment will be made in procedure 7. Since the funding source is bonds, an offsetting adjustment will be made to increase the restricted bonds amount for procedure 6. As such, the adjustments will not affect the OFA balance.

The Agency's OFA balance available for distribution to the affected taxing entities is \$2,487,775 (see table at the next page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Requested retained balance not supported:	2,487,775
Total OFA available to be distributed:	\$ 2,487,775

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.

Mr. Lynch
May 2, 2013
Page 4

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. Jana Stuard, Finance Officer, City of Norwalk
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office