DEPARTMENT OF FINANCE

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REVISED

April 20, 2013

Mr. Brian Cochran, Finance Manager
City of Novato
75 Rowland Way, Suite 200
Novato, CA 94952

Dear Mr. Cochran:

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 8, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Novato Successor Agency (Agency) submitted an oversight board approved OFA DDR to the Finance on January 11, 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 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 March 21, 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:

- Disallowed cash transfers in the amount of $21,455,600. Our review indicates that the former Redevelopment Agency (RDA) transferred cash to the City of Novato (City) during the period January 1, 2011 through June 30, 2011 to repay city loans. Of the $21,455,600 transferred $14,563,041 were proceeds from 2011 Tax Allocation Bonds. The bonds were issued specifically to repay the City loans. The proceeds were used for the purpose for which they were issued, and this transfer is allowable. Therefore, Finance is reversing its adjustment by $14,563,041.

  The remaining amount of $6,892,559 represents a payment of loans that were issued after the first two years of the RDA's creation. HSC section 34179.5 (c) (2) states the dollar value of assets and cash transferred to the creator of the RDA by the former RDA or successor 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 (b) (2) states that for the purpose of the HSC section governing the DDRs, "enforceable obligation" includes any of the items listed in HSC section 34171 (d). HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the creator of the RDA and the former RDA. As such, the transfer is not an enforceable obligation and pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the creator of the RDA

and the former RDA for which an enforceable obligation does not exist is not permitted. Therefore, the payment of these loans is not permitted, and the OFA balance available for distribution is adjusted by $6,892,559.

On April 10, 2013, after the Meet and Confer process, the Agency provided additional accounting records showing $855,600 of the payments were made in October 2010. Therefore, Finance is reversing $855,600 of its adjustment.

Finance notes that the repayment of these 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 Recognized Obligation Payment Schedules (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 $5,219,813 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(817,146)
Finance Adjustments:		
Disallowed transfers to City		6,036,959
Total OFA available to be distributed:	$	5,219,813

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. Cathy Capriola, Assistant City Manager, City of Novato
Mr. Roy Given, Director of Finance, Marin County Auditor-Controller
California State Controller's Office