



June 5, 2013

Mr. Mikah Salsi, Program Specialist
City of Oroville
1735 Montgomery Street
Oroville CA, 95965-4897

Dear Mr. Salsi:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Oroville Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 16, 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 29, 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 27, 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:

- Transfer to the City of Oroville (City) in the amount of \$1,852,500 continues to be disallowed. The Agency stated that these funds were not a transfer, but was the principal and interest payment of loans from the City. The loan agreements were entered into by the former Redevelopment Agency and the City in 1987 and 1995. Our review indicates that the funds were transferred to the City on January 30, 2012. The loans were listed on the Recognized Obligation Payment Schedule (ROPS) for the periods January through June 2012 (ROPS I) and the July through December 2012 (ROPS II); however, the item was denied on both ROPS. In addition, 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 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 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. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

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 ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- The Agency's request to retain \$3,228,125 to cover enforceable obligations for fiscal year 2012-13 is partially denied. Based on further review during the Meet and Confer process, the Agency may retain \$2,298,172 (\$1,624,529 + \$673,643) and the OFA balance available will be increased by \$929,953 (\$3,228,125 - \$2,298,172) as further discussed below.
 - On ROPS II, Finance approved \$3,611,822 from Reserve Balance (Reserves) to fund enforceable obligations. On the July through December 2013 ROPS form (ROPS 13-14A), the Agency reported and the CAC verified expenditures (including administrative allowance costs) totaling \$2,839,492. Of that amount, the Agency indicated they expended \$1,039,767 (\$1,000,000 + \$351 + \$39,416) of approved Low and Moderate Income Housing Funds (LMIHF) and \$70,196 of approved bond funds during the ROPS II period. The Agency also reported expending \$150,000 for Item No. 19 when only \$45,000 was approved for expenditure during the ROPS II period. Pursuant to HSC section 34177 only those payments listed and approved on the ROPS may be made by the Agency from the funds specified in the ROPS. To the extent the Agency is required to expend additional funds in excess of the amount approved and received, the Agency should place the additional amounts on a subsequent ROPS for review and approval. Therefore, only \$1,624,529 (2,839,492 - \$1,039,767 - \$70,196 - \$105,000) of approved Reserves were spent during the ROPS II period. As such, the Agency is allowed to retain \$1,624,529 in Reserves to cover approved enforceable obligations during the ROPS II period.
 - On the January through June 2013 ROPS (ROPS III), Finance approved \$919,145 of Reserves to be expended. Of that amount, the Agency was approved to retain \$245,502 in the LMIHF DDR for items listed on the ROPS III. Therefore, the Agency will be allowed to retain \$673,643 (919,145 - \$245,502) in Reserves to cover approved enforceable obligations during the ROPS III period.
- Should 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.
- In addition, the Agency requested to retain \$125,000 in Redevelopment Property Tax Trust Fund (RPTTF) for administrative costs during the ROPS III period. However, the Agency would have received the RPTTF funding after June 30, 2012 and the amount would not have been included as part of the OFA DDR. According the County Auditor Controller, the Agency received RPTTF for administrative allowance costs during ROPS III in the amount of \$125,000.

Therefore, it is unnecessary retain current OFA balance for this amount and the Agency's request to retain \$125,000 is not allowed.

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:

- Balances retained for the funding of an enforceable obligation in the amount of \$26,992 is denied. Our review indicates the Agency requested and was approved for RPTTF funding on ROPS 13-14A for the Taylor Developer Participation Agreement. However, the Agency would have received the RPTTF funding after June 30, 2012 and the amount would not have been included as part of the OFA DDR. Therefore, the balance requested for retention is not permitted and the balance is increased by \$26,992.

The Agency's OFA balance available for distribution to the affected taxing entities is \$3,279,834 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 470,389
Finance Adjustments	
Disallowed transfers:	\$ 1,852,500
Denied ROPS items:	929,953
Denied balances to be restricted:	26,992
Total OFA available to be distributed:	\$ 3,279,834

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

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Diane D. Macmillan, Finance Director, City of Oroville
Ms. Maria Solis, Auditor-Accountant, County of Butte, Auditor-Controller
California State Controller's Office