DEPARTMENT OF FINANCE

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September 6, 2013

Mr. Bradley Ward, Finance Director
City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806

Dear Mr. Ward:

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 August 2, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Pablo Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on May 20, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on August 2, 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 August 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:

- The request to restrict assets legally restricted for uses by debt covenants, grant agreements, or other governmental requirements was decreased by $218,501. Based on additional information and further review during the Meet and Confer process, Finance continues to increase the OFA balance available by $30,552, as further discussed below:
    - The request to restrict $30,552 for maintenance for the Willow Mobile Home Park is disallowed. The Agency provided the Lease Agreement, which states that the Agency will continue to be responsible for the maintenance, but it does not require the Agency to maintain a reserve account for maintenance costs. Additionally, ABx1 26/AB 1484 only allow a reserve to be held when required by a bond indenture or when the next property tax allocation will be insufficient to pay all obligations due under the provisions of the bond. Furthermore, the Agency has not requested and Finance has not approved the use of any funds for the maintenance of the property on a Recognized Obligation Payment

Schedule (ROPS). Therefore, the OFA balance available will be increased by $30,552.

- The request to restrict unspent bond proceeds totaling $187,949 was disallowed. During the initial review, according to the Agency, these funds are pooled with the City of San Pablo funds and documentation was not provided to support the request to restrict these funds as bond proceeds. During the Meet and Confer process, the Agency stated these funds are being held by the fiscal agent and provided statements from the fiscal agent supporting the amount as bond proceeds. Therefore, the adjustment to the OFA balance is no longer necessary.

- The request to restrict balances for the funding of enforceable obligations in the amount of $6,742,560 is partially disallowed. Based upon further review during the Meet and Confer process the Agency may retain $4,426,251 ($1,495,007 + $2,931,244) for enforceable obligations and the OFA balance available will be increased by $2,316,309 ($6,742,560 - $4,426,251), as further discussed below.

  - For the July through December 2012 (ROPS II) period, Finance approved $6,734,282 and the County Auditor Controller (CAC) distributed $3,671,540 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency reported actual expenditures on the July through December 2013 (ROPS 13-14A) form of $5,166,547 for the ROPS II period, which included $1,495,007 paid from Reserves due to the shortfall in RPTTF funds received. Therefore, the Agency may retain $1,495,007 from Reserves for ROPS II obligations.

    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 III) period, Finance approved $7,963,621 and the CAC distributed $4,399,256 from the RPTTF and made a prior period adjustment of $107,602. This resulted in a shortfall of funding totaling $3,456,763. Therefore, the Agency may retain the remaining funds of $2,931,244 from Reserves to ensure sufficient funding is available for the ROPS III period.

Should 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 request to retain balances of $3,499,365 to satisfy ROPS items for the 2012-13 fiscal year has been increased by $279,777. The Agency received a distribution in the amount of $3,671,540 for the ROPS II period. Additionally, Finance noted that the CAC adjusted the ROPS III distribution for the prior period by $107,602. Therefore, Finance is allowing the retention of $3,779,142 ($3,671,540 + $107,602) to adequately fund approved ROPS II and III obligations.

The Agency's OFA balance available for distribution to the affected taxing entities is $0 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(2,067,088)
Finance Adjustments		
Add:		
Request to restrict balances not supported	$	30,552
Additional ROPS funding		(279,777)
Requested retained balances not supported		2,316,309
Total OFA available to be distributed:		$0

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, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Kelsey Worthy, Assistant City Manager
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office