DEPARTMENT OF FINANCE

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May 10, 2013

Ms. Eva Howard-Phelps, Administrative Services Director
City of San Ramon
2228 Camino Ramon
San Ramon, CA 94583

Dear Ms. Phelps:

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 4, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Ramon Successor Agency (Agency) submitted an oversight board approved OFA DDR Finance on January 18, 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 4, 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 24, 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 retain legally restricted assets totaling $10,324,189 was previously adjusted by $1,010,603. Finance no longer believes this adjustment is necessary. During the Meet and Confer process, the Agency provided additional documentation supporting the amount represents restricted funds. More specifically, $3,687,958 is cash with the fiscal agent, $3,765,319 is cash from the Redevelopment Property Tax Trust Fund (RPTTF) distribution for the Recognized Obligation Payment Schedule (ROPS) period of July through December 2012 (ROPS II), and $2,870,912 are bond funds in the Agency's account for capital projects.

- The request to retain non-cash assets totaling $5,884,456 is $18,276 disallowed. The Agency entered into a loan agreement with Diablo Motors on July 22, 2011 and a Form of Promissory Note on August 5, 2011 in the amount of $20,000. The California State Controller's Office identified the improper transfer of funds, and the Agency reversed the transfer, as noted in the DDR. Finance maintains the agreement is not an enforceable obligation per HSC section 34171 (d). Therefore, the OFA balance available for distribution is increased by $18,276 ($20,000 - $1,724 loan payment), which is the outstanding balance on the loan.

We also note that the reversal of the $20,000 transfer made by the Agency is not reflected in the DDR. Therefore, a reduction in the amount transferred, totaling $20,000, is appropriate to accurately represent the total asset balance as of June 30, 2012. Therefore, the OFA balance available for distribution is decreased by $20,000.

- The Agency requested to retain the remaining OFA balances totaling $1,641,789 is allowed; after adjustments for the items noted above, the amount available is $1,640,065 ($1,641,789 - $1,724). The Agency claims these funds are needed to satisfy approved obligations on the Recognized Obligation Payment Schedule for the January through June 2013 ROPS (ROPS III) period. Our review indicates the Agency was approved for $9,744,127 in Redevelopment Property Tax Trust Funds (RPTTF) for the ROPS III period. Finance confirmed the County Auditor-Controller only distributed $3,904,789 for the period. Therefore, the Agency will be permitted to retain the remaining OFA balances to satisfy ROPS III approved obligations.

  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 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:	$	-
Finance Adjustments		
Add:		
Adjustments for non-cash assets		18,276
Reversal of cash transfer		(20,000)
Total OFA available to be distributed:	$	(1,724)

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 Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Marc Fontes, Economic Development Director, City of San Ramon
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office