DEPARTMENT OF FINANCE

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October 4, 2013

Mr. Gary Ameling, Director of Finance
Santa Clara Successor Agency
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Ameling:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Santa Clara Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on June 17, 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 was 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 29, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items related to the DDR. The Meet and Confer session was held on September 18, 2013.

During our initial review of the OFA DDR, Finance made no adjustments to the OFA balance available for allocation to the affected taxing entities as reported in the DDR and determined that the Agency's OFA balance available for distribution to the affected taxing entities is $26,730,410 plus interest earned since funds were transferred. 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.

- The Agency contends that cash assets totaling $13,595,129 from January 1, 2011 through January 31, 2012, and $5,340,583 from February 1, 2012 through June 30, 2012, are rent payments for properties the former redevelopment agency (RDA) held in trust for the benefit of the City of Santa Clara (City) until they were conveyed back to the City in March 2011. The rent payments are related to ground leases for the Hyatt Regency Hotel, the Techmart Office building, the Hilton Hotel, the Gateway property, and the Great America Theme Park. Pursuant to various cooperation agreements entered into at the time the City conveyed the properties to the former RDA, the rent received from the properties had been paid by the former RDA to the City for General Fund uses.

  However, pursuant to 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 enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA.

The various agreements that were entered into between the former RDA and the City are not enforceable obligations and are no longer valid. Additionally, the leases between the former RDA and the various third parties did not obligate the former RDA to pay the City for rent payments received. Since the amounts have already been accounted for in the OFA DDR, no adjustment will be made to the OFA balance available for remittance.

Hyatt and Techmart Properties

The City transferred the fee title via a quitclaim deed for the Hyatt and Techmart properties to the former RDA on July 17, 1984 in accordance with a Cooperation Agreement dated September 21, 1982, which was amended on June 21, 1983 by the First Amended Cooperation Agreement. The Cooperation Agreement and Amendment stated that the former RDA was to pay all funds actually received from the lease of the property to the City upon receipt. The former RDA entered into a Hotel Ground Lease for the Hyatt site on April 30, 1985; the City was not a party to this agreement. The ground lease has been amended six times and in the most recent amendment on December 13, 2005, the City was still not a party to the agreement. The former RDA also entered into a Trade Center Ground Lease for the Techmart site on May 13, 1998; the City was not a party to this agreement either. Both of the ground leases detail the rents to be paid to the former RDA. However, they do not state that the payments received by the former RDA would then be transferred to the City. Therefore, the rents paid to the City based on the Cooperation Agreement were not made pursuant to an enforceable obligation and are not permitted.

Hilton Property

The City transferred the fee title via a quitclaim deed for the Hilton property to the former RDA on June 5, 1985, in accordance with a Cooperation Agreement dated June 1, 1985. The Cooperation Agreement stated that the former RDA was to pay all funds actually received from the lease of the property to the City upon receipt. The former RDA entered into a Ground Lease for the Hilton site on July 9, 1999; the City was not a party to this agreement. The ground lease details the rents to be paid to the former RDA; however, it does not state that the payments received by the former RDA would then be transferred to the City. Therefore, the rents paid to the City based on the Cooperation Agreement were not made pursuant to an enforceable obligation and are not permitted.

Gateway Property

The City transferred the fee title via a grant deed for Parcel 2 of the Gateway property to the former RDA on February 14, 2001 in accordance with a Cooperation Agreement dated May 2, 2000, which was amended on July 19, 2005 by Amendment No. 1 to the Cooperation Agreement. The Cooperation Agreement stated that the former RDA was to pay consideration to the City for the property in an amount equal to all rent when and as received under any of the leases. However, Amendment No. 1 amended the Consideration

section to state that the former RDA agreed to make payments to the City toward the property value of all parcels of the Gateway property (although only Parcel 2 was transferred) in the amount of $101 million from any source of funds including land sale proceeds, ground rent payment, tax increment funds, and any other funds available for such purpose. The former RDA entered into a Ground Lease for Parcel 2 of the Gateway property on February 14, 2001; the City was not a party to this agreement. The ground lease details the rents to be paid to the former RDA; however, it does not state that the payments received by the former RDA would then be transferred to the City. Therefore, the rents paid to the City based on the Cooperation Agreement were not made pursuant to an enforceable obligation and are not permitted.

Great America Theme Park

The Great America Theme Park property was purchased by the former RDA using proceeds from lease revenue bonds. The property was transferred via grant deed from the Marriott Corporation to the Sports and Open Space Authority (SOSA) on June 5, 1985, and was subsequently transferred via grant deed from SOSA to the former RDA on June 5, 1985. The former RDA entered into a Ground Lease for the property on June 1, 1989; the City was not a party to this agreement. The Agency contends that the payments received were transferred to the City to make payments in accordance with the Consideration section of the July 19, 2005, Amendment No. 1 to the Cooperation Agreement for the Gateway properties. The ground lease details the rents to be paid to the former RDA; however, it does not state that the payments received by the former RDA would then be transferred to the City for payment of the Gateway properties. Therefore, the rents paid to the City based on the Cooperation Agreement were not made pursuant to an enforceable obligation and are not permitted.

Furthermore, the non-liquid assets transferred to the City were subject to the California State Controller's Office review of asset transfers. To the extent these properties did not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

Finance notes, however, that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, HSC section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

- The Agency contends that cash assets totaling $1,000,452 represent General Fund revenues that are the property of the City. The amount consists of two transfers made in 2001for $114,500 and 2006 for $885,952 by the City from the General Fund to the former RDA to assist with redevelopment projects. The projects were never completed by the former RDA and the funds were never spent. The Agency stated that there were no written agreements between the City and the former RDA indicating that the funds provided to the former RDA were to be repaid or when they were to be repaid. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. No adjustment will be

made to the OFA balance available for remittance because the amount has already been accounted for in the OFA DDR.

As previously stated, HSC section 34179.5 (c) (2) states 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 enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. The arrangement between the former RDA and the City is not an enforceable obligation and is no longer valid.

- The Agency contends that cash assets totaling $2,027,717 in rent payments received by SOSA is related to property that has always been owned by SOSA and continues to be owned by SOSA. For purposes of this review, SOSA is referred to as the City pursuant to HSC section 34167.10 (i.e. SOSA is a component of the City as reported in the City's Comprehensive Annual Financial Report). The City and the former RDA entered into a Cooperation Agreement on January 23, 1996 related to parcels R-1, R-3, and R-4. The Cooperation Agreement states that the former RDA shall pay the City the amount of rent actually received. However, the arrangement between the former RDA and the City is not an enforceable obligation and is no longer valid pursuant to HSC section 34179.5 (c) (2). Therefore, no adjustment will be made to the OFA balance available for remittance because the amount has already been accounted for in the OFA DDR.

Based on the foregoing, the Agency's OFA balance available for distribution to the affected taxing entities is $26,730,410 plus interest earned since funds were transferred. 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 for some reason the Agency cannot immediately remit the entire sum, HSC section 34179.6 (h) (3) authorizes Finance to review requests for an installment payment plan. If the Agency wishes to make installment payments, please notify your Agency's assigned Finance review staff immediately. Upon receipt of your request, Finance will work with your Agency to determine whether installment payments are appropriate.

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 section 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.

Furthermore, in addition to the OFA balances available for remittance, Finance determined that after June 30, 2012, the City has received over a million dollars of revenues per month from assets that were transferred from the former RDA to the City. Pursuant to HSC section 34171 (d) (2), the property conveyance and the assignment and assumption agreements pertaining to the transferred assets are not enforceable obligations. Therefore, the revenues associated with the assets plus any interests that those funds have accumulated are considered Agency funds. Consequently, these funds should be available for the funding of enforceable obligations on future ROPS. HSC section 34177 (l) (1) states that the Redevelopment Property Tax Trust Fund funding may be requested on a ROPS only to the extent that no other funding sources are available or when payment from property tax revenues is required by an enforceable obligation.

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,

Justyn Howard
Assistant Program Budget Manager

cc: Ms. Tamera Haas, Assistant Director of Finance, City of Santa Clara
Ms. Irene Lui, Controller Treasurer, County of Santa Clara
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office