



May 24, 2013

Ms. Nancy Manchester, Program Specialist
City of Santa Rosa
90 Santa Rosa Avenue
Santa Rosa, CA 95404

Dear Ms. Manchester:

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 17, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Santa Rosa Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 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 17, 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 20, 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:

- Assets transferred to the City of Santa Rosa (City) on June 30, 2011 in the amount of \$1,135,491. Finance previously determined these transfers were for the principal repayment of the 2003 Santa Rosa Center (SRC) and 2005 Gateway Redevelopment Project Area (GW) agreements. The agreements are between the former redevelopment agency (RDA) and the City and were determined to not be enforceable obligations in the January through June 2012 Recognized Obligation Payment Schedule (ROPS I) period. The Agency claims these amounts are for administrative costs incurred for the projects. The Agency further contends Finance only captured the transfer out and that amounts are transferred from the City general fund on July 1 of most years and repaid on June 30. Our review indicates the following:

According to Sections 3 and 6 of the 2003 SRC Cooperative Agreement, the City would annually transfer funds to the Agency for project costs and those costs would be repaid annually. The Agency provided documentation supporting \$248,587 was transferred from the City to the Agency on July 1, 2010 and transferred back from the Agency to the City on June 30, 2011. Therefore, because the amount was received and repaid within the same fiscal year, this amount will be permitted and no adjustment to the OFA balance available for distribution is needed.

According to sections 3 and 4 of the 2005 GW Cooperative Agreement, the City would annually advance funds to the Agency for administrative costs and those costs would be repaid annually. We note, this amount is not specified in the agreement and is in addition to the actual amount of the loan (as per Section 2). The Agency provided documentation supporting \$886,904 was advanced from the City to the Agency on July 1, 2010 and transferred back from the Agency to the City on June 30, 2011. Therefore, because the amount was received and reversed within the same fiscal year, this amount will be permitted and no adjustment to the OFA balance available for distribution is needed.

- Balances legally restricted totaling \$7,809,340 is decreased by \$4,590,070. The Agency requests to restrict \$4,558,228 for capital project debt agreements and \$31,842 for various payments for goods and services, as further discussed below:
 - Finance was previously unable to determine whether the \$4,558,228 is for enforceable obligations or the nature of their restriction. The Agency contends the items are enforceable obligations eligible for retention as legally restricted assets because the Agency was authorized to reenter into the agreements with the City on June 21, 2012 by resolution of the duly appointed Oversight Board after making findings of benefit to taxing entities as permitted by Health and Safety Code sections 34178 (a) as amended by ABx1 26.

While HSC section 34178 (a) authorizes successor agencies to reenter into agreements, any agreement reentered into cannot conflict with the requirements set forth in HSC 34171 (d), as ABx1 26 did not specifically carve out an exception to the definition of an enforceable obligation nor did HSC section 34178 (a) not withstand HSC section 34171 (d). Therefore, the Oversight Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation. Even if Finance did not object to the specific Oversight Board actions authorizing the Agency to reenter into agreements, the statute as a whole prohibits such an action from being validated if it conflicts with the definition of an enforceable obligation. Additionally, Finance has clearly defined authority under HSC section 34179.5 (c) (5) (D) to verify that current balances that are legally or contractually dedicated or restricted are supported by an enforceable obligation. HSC section 34179.5 also 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.

We further note the agreements were not with parties other than the City that created the Agency and was not entered into prior to June 28, 2011. Therefore, even if an Oversight Board approved an action that created an enforceable obligation, Finance has the authority to review the enforceable obligation for compliance with HSC section 34171 (d) or for compliance with any other statutory requirements contained in Chapter 26, statutes of 2012 (AB 1484). At no time can an Oversight Board action eliminate Finance's authority to review an enforceable obligation as part of a DDR review. Therefore, the restriction of

these funds is not supported by an enforceable obligation and is not permitted. Accordingly, the OFA balance available for distribution will be increased by \$4,558,228.

- o Finance was previously unable to determine the specific restriction imposed or the enforceability for outstanding payments totaling \$31,842. The Agency claims these amounts are restricted invoices payable and deposits pursuant to a development and disposition agreement (DDA). Our review indicates the following:

The Agency requested to retain \$20,916, the balance of funds on deposit pursuant to a DDA. The Agency claims these are a deposit from the developer to be used for costs incurred on property prior to close of escrow. The Agency provided the DDA dated June 29, 2010 and two memorandums for an extension on the close of escrow for the purchase of property dated March 16, 2011 and December 20, 2011. These memorandums indicate the Agency is holding a deposit from the developer to be used for operation, maintenance, and staff costs associated with the property; however, these documents extend the timeframe of performance for the developer and thus constitute an amendment to the DDA. HSC section 34163 (c) states agencies do not have the authority and shall not amend or modify existing agreements. In addition, per HSC section 34177.3 (a) successor agencies lack the authority and shall not create new enforceable obligations. In addition, Section 106 of the DDA states that if the developer is in default or if the Agency terminates the DDA, the deposited funds remain with the Agency. For these reasons, Finance has determined the amount is not adequately supported by an enforceable obligation and cannot be retained as restricted. The OFA balance available for distribution will be increased by \$20,916.

The Agency's request to retain the remaining \$10,926 for invoiced expenses is denied. The Agency provided documentation; however, the documentation does not agree to the amounts requested. In addition, the invoices (1) are addressed to the City, (2) were not reported on the Recognized Obligations Payment Schedule (ROPS) for the January through June 2012 period (ROPS I), or (3) were for costs appearing to be related to the DDA referenced above. Therefore, the remaining \$10,926 is not adequately supported and the OFA balance available for distribution will be increased by \$10,926.

- The DDR's exhibit for balances needed for fiscal year 2012-13 totals \$19,596,058; therefore, the Agency requested to retain the remaining asset balance of \$10,776,627 under Procedure 9 of the DDR. Per HSC section 34179.5 (c) (5) allows for retention of funds needed to satisfy obligations that will be placed on the ROPS during the current fiscal year. Therefore, the Agency will be permitted to retain funds, as follows:
 - o In the Recognized Obligation Payment Schedule for the July through December 2012 ROPS (ROPS II) period, the Agency was approved for \$3,476,322. The County Auditor Controller only distributed \$2,783,905; therefore, the Agency will be permitted to retain the actual amount of funds expended during the ROPS II period in the amount of \$2,950,475.

- o The Agency was also approved to expend \$2,248,622 in reserves for the January through June 2013 ROPS (ROPS III) period. The Agency will be permitted to retain these funds to satisfy ROPS II items approved for reserve funding.
- o The Agency was approved for \$2,235,398 in reserves for the July through December 2013 ROPS (ROPS 13-14A) period. The Agency will be permitted to retain these funds to satisfy obligations approved for reserve funding in ROPS 13-14A.
- o The Agency's request to retain the remaining amount of \$3,342,132 was either not approved on a ROPS for the current fiscal year or was not approved. Therefore, the Agency will not be permitted to retain these funds.

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:

- Finance noted the County Auditor Controller adjusted the ROPS III January 2, 2013 distribution by \$1,012,825 pursuant to HSC section 34186 (a). Therefore, Finance is allowing the retention of these funds in order to adequately fund approved ROPS III expenditures.

The Agency's OFA balance available for distribution to the affected taxing entities is \$6,919,377 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Request to retain legally restricted balance not supported:	4,590,070
Request to retain balance not supported:	3,342,132
HSC section 34186 (a) retention:	(1,012,825)
Total OFA available to be distributed:	\$ 6,919,377

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.

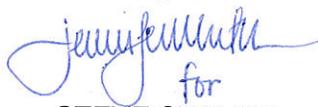
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain 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. Erick Roeser, Property Tax Manager, Sonoma County
California State Controller's Office