DEPARTMENT OF FINANCE

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May 5, 2013

Mr. D-B Heusser, City Manager
City of Selma
1710 Tucker Street
Selma, CA 93662

Dear Mr. Heusser:

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 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Selma Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 14, 2012. 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 1, 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 23, 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 balances totaling $1,215,246 is partially disallowed. During Finance's initial review, the Agency failed to provide sufficient documentation to support the request to retain funds. Based upon further review during the Meet and Confer process, Finance is reversing $878,264 ($596,566 + $281,698) of its previous adjustment and continues to increase OFA balances available by $336,982 ($1,215,246 - $878,264), as further discussed below.

    - Notes receivable from third parties totaling $671,724 and amount due from the City of Selma (City) totaling $31,000. During the Meet and Confer process, the Agency provided amortization schedules for six notes receivables showing an outstanding balance to be received of $596,566. Therefore, Finance will reverse $596,566 of its adjustment and the OFA balance will be increased by $75,158 for the unsupported amount.

      For the amount due from the City, the Agency did not provide an agreement with the City showing repayment terms. Without a valid contract or repayment schedule, this loan is considered payable on demand and should be included as part of the June 30, 2012 balance. Per HSC section 34179.5 (b) (1), "cash" and

"cash equivalents" include payables on demand. As such, the OFA available for distribution to the taxing entities will be adjusted by $31,000.

- Amount due to the City totaling $65,262. During the Meet and Confer process, the Agency stated that the $65,262 was related to insurance claim proceeds received by the City, but incorrectly deposited into the former Redevelopment Agency's (RDA) account. In November 2010, insurance proceeds totaling $435,262 was deposited into the former RDA's account. The former RDA spent some of the proceeds before transferring $370,000 back to the City. Therefore, the remaining $65,262 to be repaid should be considered a loan to the former RDA from the City. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. 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. This loan was after the first two years of the RDA's creation. Therefore, a transfer would not be pursuant to an enforceable obligation and is not permitted. The OFA balance available will be increased by $65,262.

  The repayment of 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 Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- Reservation to meet prior claims totaling $165,562. During the Meet and Confer process, the Agency stated this amount was needed to cover enforceable obligations for the January through June 2012 and July through December 2012 ROPS (ROPS I and ROPS II, respectively). However, any amounts paid for the ROPS I period would already be reflected in the total asset balance as of June 30, 2012 because those funds would have been disbursed prior to June 30, 2012, and would not be included in the total asset balance. Furthermore, OFA balances expended for the ROPS II period are already accounted for in Procedure 9 of the DDR (see below for further information). Therefore, the OFA balance available will be increased by $165,562.

- Amounts for fiscal year 2012-13 enforceable obligations totaling $281,698. For ROPS II, Finance approved $299,119 and the County Auditor Controller (CAC) distributed $0 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency requested to retain $281,698 for payments made from the OFA balances on approved enforceable obligations during the ROPS II period. Therefore, the Agency may retain $281,698 for the ROPS II period.

- For the January through June 2013 ROPS (ROPS III) period, Finance approved and the CAC distributed $316,769 from the RPTTF. The CAC did not make any adjustments for the January through June 2012 period (ROPS I) on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process.

- Transfers totaling $75,000 are disallowed. This transfer repaid an advance from the City to the former RDA. During the Meet and Confer process, an additional $405,783 in transfers to the City for repayment of loans from City to the former RDA was identified in the General Ledger that was provided. The General Ledger had not been provided during the initial review; therefore, Finance had not been able to identify these transfers previously. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. 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. These loans were issued after the first two years of the RDA's creation. Therefore, the transfers were not made pursuant to enforceable obligations and are not permitted. The OFA balance available will be increased by $480,783.

  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 Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- During the Meet and Confer process, Finance identified $725,457 in property transfers from the former RDA to the City. However, because properties are not considered cash or cash-equivalent asset, Finance has made no adjustment to the available balance to the affecting taxing entities.

  These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do 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.

The Agency's OFA balance available for distribution to the affected taxing entities is $817,765 (see table below).

| **OFA Balances Available For Distribution To Taxing Entities** | | |
|---|---|---|
| Available Balance per DDR: | $ | - |
| Finance Adjustments | | |
| Add: | | |
| Disallowed transfers | $ | 480,783 |
| Requested retained balances not supported | | 336,982 |
| **Total OFA available to be distributed:** | $ | 817,765 |

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Neal Costanzo, City Attorney, City of Selma
Mr. George Gomez, Accounting Financial Manager, Fresno County
California State Controller's Office