



REVISED

July 16, 2013

Ms. Marie Marron Berkuti, Finance Manager/Treasurer
City of Solana Beach
635 South Highway 101
Solana Beach, CA 92075

Dear Ms. Berkuti:

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 March 26, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Solana Beach Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 11, 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 March 26, 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 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:

- In Finance's initial review, it was determined that the total amount of assets held as of June 30, 2012, should be \$1,637,830 instead of the \$521,214 included in the DDR. During the Meet and Confer process, Finance determined that the total amount of assets held as of June 30, 2012, should be \$970,789 as reported per Note 2 of the 2012 Comprehensive Annual Financial Report (CAFR), Total Fiduciary Funds Statement of Net Assets. However, subsequent to the Meet and Confer process, the Agency provided clarifying information showing that the assets held by the Agency at June 30, 2012, should be the \$521,214 reported in the DDR and the additional \$449,575 identified during the Meet and Confer process is cash related to various assessment districts, not the former RDA or Agency. Therefore, Finance is reversing its adjustment.
- Transfers of bond proceeds in the amount of \$638,308 were made to the City. The Agency claims the transfer was made pursuant to a cooperation agreement between the City and the former RDA. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency 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 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.

The transfer was not made pursuant to an enforceable obligation and is not permitted, and the Agency should recover the bond proceeds. The unspent bond proceeds are restricted assets of the Agency, not the City. As the amount is related to legally restricted bond proceeds, the adjustments do not affect the OFA balance available for distribution to the taxing entities.

- Balances legally restricted totaling \$519,726. Our review identified \$197,381 is cash held by the Agency from a City loan. These funds are not legally restricted; therefore, the OFA balance available for distribution will be increased by \$197,381.
- The Agency requested to legally restrict \$79,165. Our review indicates this amount represents cash reserves needed to satisfy bond debt service payments for the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 period (ROPS II). During the Meet and Confer, the Agency agreed that this amount was duplicated and was included in the ROPS II request to retain balances for the 2012-13 fiscal year. Therefore, the OFA balance available for distribution will be increased by \$79,165.
- Request to retain balances totaling \$380,530. Our review indicates the Agency did not receive all approved Redevelopment Property Tax Trust Funds for the ROPS II period. The Agency will be permitted to retain funds received and actually spent up to the amount approved in the ROPS II period. In addition, the Agency did not receive all approved RPTTF for the January through June 2013 (ROPS III) period; therefore, the Agency will be permitted to retain the amounts needed to satisfy ROPS III approved obligations and no adjustment to the OFA balance available for distribution is warranted.

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.

Should any 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 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:	\$ (371,677)
Finance Adjustments	
Add:	
Request to retain legally restricted balance not supported:	276,546
Total OFA available to be distributed:	\$ (95,131)

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

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Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego Auditor Controller
Ms. Nenita DeJesus, Senior Accountant, San Diego Auditor Controller
California State Controller's Office