



REVISED

September 19, 2013

Ms. Cindy Mosser, Finance Manager  
City of Walnut Creek  
1666 N. Main Street  
Walnut Creek, CA 94596

Dear Ms. Mosser:

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 21, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Walnut Creek (Agency) submitted an oversight board approved OFA DDR to the California Department of Finance (Finance) on January 10, 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 21, 2013. Subsequent to a Meet and Confer process on one or more items adjusted by Finance, Finance issued a final determination letter on March 21, 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 adjustment was made:

- The Agency's request to retain fund balances totaling \$2,930,630 (\$990,558 + \$1,940,072) to cover enforceable obligations is partially approved. Based on additional conversations with Agency staff, we determined the retention of \$996,716 (\$953,522 + \$43,194) is necessary to ensure adequate funding for enforceable. Accordingly, the retention of the remaining \$1,933,914 is not allowed. Specifically:
  - The Agency requested to retain \$990,558 in balances needed to satisfy Recognized Obligation Payment Schedule (ROPS) items for the 2012-13 fiscal-year. Our review indicates the Agency may retain \$953,522 as follows:

For the July through December 2012 ROPS period (ROPS II) the Agency was approved to spend \$796,158 for enforceable obligations; however, the County Auditor Controller (CAC) only distributed \$301,249 in Redevelopment Property Tax Trust Funds (RPTTF). Finance previously determined the Agency could retain \$301,249 because the RPTTF distribution occurred prior to June 30, 2012 and was included in the June 30, 2012 balance but intended for use after June 30, 2012.

In addition to the distribution, the Agency used June 30, 2012 OFA balances to satisfy its approved enforceable obligations for ROPS II; therefore, the Agency will be permitted to retain OFA balances actually spent during the ROPS II period up to the amount approved. Per the ROPS II reconciliation page included with the ROPS for July through December 2013 period (ROPS 13-14A), the Agency reported expending \$755,720 of the approved amount. Therefore, the Agency will be permitted to retain a total of \$755,720 (\$301,249 in RPTTF and \$454,471 in Reserves) for the ROPS II period.

For the January through June 2013 ROPS period (ROPS III) the Agency will be permitted to retain \$1,639. Our review indicates all approved RPTTF for the ROPS III period was available; however, the CAC reduced the RPTTF distribution for a prior period adjustment in accordance with HSC section 34186 (a) totaling \$1,639. Because this adjustment assumes these funds are available as of June 30, 2012, the Agency may retain \$1,639 to satisfy all ROPS III enforceable obligations.

For the ROPS 13-14A period, the Agency will be permitted to retain \$196,163. Our review indicates the Agency was approved to expend \$796,715 in RPTTF for the ROPS 13-14A period; however, the CAC only distributed \$600,552. Therefore, the Agency will be permitted to retain \$196,163 (\$796,715 - \$600,552) to satisfy all ROPS 13-14A enforceable obligations.

The request to retain the remaining \$37,306 out of the \$990,558 is not supported by approved enforceable obligations; therefore, the amount may not be retained. As a result, the OFA balance available for distribution will be increased by \$37,036.

- o The Agency requested to retain \$1,940,072 in assets legally restricted to fund enforceable obligations. Our review indicates the Agency may retain \$43,194 as follows:

The Agency requested to restrict \$41,666 to repay an overpayment of tax increment from the Mount Diablo project area. The Agency provided documentation supporting the CAC erroneously overpaid tax increment to the Agency for the December 2010 distribution. The documentation provided also supports the Agency must return these funds to the CAC; therefore, the Agency will be permitted to retain these funds to remit the overpayment to the CAC.

In addition, the Agency requested to restrict \$1,528 for payroll accrued as of June 30, 2012 but not paid prior to June 30, 2012. The Agency provided documentation supporting administrative costs were approved on the January through June 2012 period (ROPS I). However, according to the ROPS I reconciliation page of the ROPS III, the Agency did not expend all approved funds as of June 30, 2012; therefore, the Agency will be permitted to retain \$1,528 for accrued payroll expenses.

The Agency also requested to restrict \$478 that represents the difference between the estimated and actual True-up demand payment (\$286,288 - \$285,810). Although the Agency over-estimated the actual demand payment,

the difference is no longer encumbered and may not be retained. Therefore, the OFA balance available for distribution will be increased by \$478.

Lastly, Finance notes the Agency reported \$3,600 in interest receivable at June 30, 2012. Therefore, this amount reduces the amount requested for retention.

The Agency requested to restrict the remaining \$1,900,000 pending a finding of completion when the funds can be paid to the City for a Public Improvement and Affordable Housing Reimbursement Agreement (Reimbursement Agreement). The Reimbursement Agreement is between the City and the former redevelopment agency (RDA) dated February 15, 2011. Per Section 2 of Reimbursement Agreement, the City would design and construct two public improvement projects, fund two affordable housing projects, and fund and operate five affordable housing programs. Per Section 5, in consideration of the City's undertakings, the RDA would reimburse the City up to \$5,467,400. We note that the Reimbursement Agreement is for future projects and does not represent a prior debt of the RDA.

Per HCS section 34179.5 (c) (5) (D), amounts may be restricted to fund enforceable obligations. However, the Reimbursement Agreement is not an enforceable obligation per HSC section 34179.5. This section states that for DDR purposes, 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. This Reimbursement Agreement was also denied as an enforceable obligation on previous ROPS and through the meet and confer process. Therefore, Finance has determined this request is not pursuant to a current enforceable obligation and may not be retained. The OFA balance available for distribution will be increased by \$1,900,000.

The Agency's OFA balance available for distribution to the affected taxing entities is \$3,140,836 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 1,206,922
Finance Adjustments	
Add:	
Requested retained balance not supported	\$ 1,933,914
<b>Total OFA available to be distributed:</b>	<b>\$ 3,140,836</b>

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 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.

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.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Laura Simpson, Housing Manager, City of Walnut Creek  
Mr. Bob Campbell, Auditor-Controller, Contra Costa County  
California State Controller's Office