DEPARTMENT OF FINANCE

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May 4, 2013

Mr. Aaron Busch, Community Development Director
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

Dear Mr. Busch:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Yuba City 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 March 29, 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 18, 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:

- Transfers totaling $314,103 are partially allowed. Our review indicates the following:
    - The Agency transferred $66,965 to the City of Yuba City (City) for City labor charges related to construction projects incurred during 2011. The Agency demonstrated that these costs are former Redevelopment Agency (RDA) project-related costs incurred by City staff prior to the requirement of a Recognized Obligation Payment Schedule (ROPS). Therefore, this transfer is permitted.
    - The Agency transferred $14,148 to the City for City labor charges related to construction projects incurred during 2012. Documentation was provided to support the total labor costs transferred to the City; however, we noted these employee costs were not included on the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 period (ROPS I). In addition, these expenditures were not included on the Prior Period Obligations vs. Actual tab of the Agency's January through June 2013 ROPS (ROPS III). Therefore, this amount was not transferred pursuant to an enforceable obligation. The OFA balance available for distribution will be increased by $14,148.

- The Agency transferred $232,989 to the City to support the purchase of the Sutter Theater Loan from the Sutter Community Bank in the amount of $232,989 to prevent foreclosure on the property. Documentation provided by the Agency indicated the City's intent in April 2011 to purchase the loan with redevelopment funds; however, there are no accompanying documents indicating the former RDA's commitment of funds. In addition, the Agency provided an Assignment of Deed of Trust recorded in July 2011 assigning the value received to the City as the new mortgage lender, not the 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. 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. Therefore, this transfer was not pursuant to an enforceable obligation and is disallowed. Therefore, the OFA balance available for distribution will be increased by $232,989.

- The Agency requested to retain the $961,960 previously denied. Our review indicates the Agency used these reserve funds during the July through December 2012 ROPS (ROPS II). In addition, the Agency was approved to use these reserve funds during the January through June 2013 (ROPS III) and June through December 2013 (ROPS 13-14A) periods. Therefore, the Agency will be permitted to retain these funds to satisfy approved reserve funded obligations and no adjustment will be made to the OFA balance available for distribution.

  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 a deficit 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), 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 $364,071 (see table on following page).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	116,934
Finance Adjustments		
Add:		
Disallowed transfers	$	247,137
Total OFA available to be distributed:	$	364,071

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: Ms. Robin Bertagna, Finance Director, City of Yuba City
Mr. John Beaver, Tax Manager, Sutter County
California State Controller's Office