



April 27, 2013

Ms. Charity Hernandez, Redevelopment Manager
City of Ontario
303 East B Street
Ontario, CA 91746

Dear Ms. Hernandez:

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 25, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Ontario Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 13, 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 March 25, 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 10, 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 \$51,109,298 were previously not allowed; however, based on further information provided during the Meet and Confer process, Finance is reversing \$385,829 of the adjustments as discussed below:
 - Payment for the 2002 Housing Set Aside Loan in the amount of \$168,719. This payment was approved for Low and Moderate Income Housing Fund (LMIHF) funding on the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2012 (ROPS I). During the Meet and Confer process, the Agency did not object to this adjustment. Therefore, Finance continues to increase the OFA balance available by \$168,719.
 - Reimbursement made to the City of Ontario (City) for the Fire Station No. 5 project in the amount of \$385,829. During the Meet and Confer process, the Agency provided a resolution from the former Redevelopment Agency's (RDA) Board committing the former RDA's funds to the project prior to June 27, 2011. The Agency also provided a contract with a third party executed prior to June 27, 2011. Therefore, Finance is reversing its adjustment of \$385,829.
 - Loan repayments to the City for the Oaks Middle School project totaling \$8,954,167. 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. 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. The loan was issued after the first two years of the RDA's creation; therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. The OFA balances available are being increased by \$8,954,167.

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 a future ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- Payments for Educational Revenue Augmentation Fund loans totaling \$4,019,922. The Agency requested no funding to meet these obligations on the ROPS I. Furthermore, pursuant to HSC section 34191.4 (b) (2), these repayments shall not begin until fiscal year 2013-14. During the Meet and Confer process, the Agency stated that these funds were already remitted as part of the LMIHF DDR. However, the \$21.6 million remitted on the LMIHF DDR was related to funds improperly transferred to the Housing Successor Agency for an encumbrance that was listed on the Housing Asset Transfer Form. Therefore, the OFA balance available is being increased by \$4,019,922.
- Payments to the City for 2001 Subordinate Tax Allocation Bond payments totaling \$17,968,688. The bond indenture was between the former RDA and the City and identifies the City as the sole bondholder. HSC section 34171 (e) defines indebtedness obligations as bonds, notes, and certificates of participation issued or delivered by the RDA to third party investors or bondholders. The City is not considered a third party, and therefore this item does not meet the definition of indebtedness. Additionally, 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 that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or solely for the purpose of securing or repaying indebtedness obligations to third-party investors or bondholders. Therefore, the OFA balance available is being increased by \$17,968,688.

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 ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- Reimbursement to the City for the 2001 Lease Revenue Bond payments in the amount of \$19,611,973. The bond documents provided do not pledge the former RDA's tax increment funds as security for payment. Additionally, the undated

and unsigned Reimbursement Agreement between the City and the former RDA that was provided does not obligate the former RDA to make the payments that secure the bond. Reimbursements to the City were to be related to the City's costs incurred in the development of certain projects. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or solely for the purpose of securing or repaying indebtedness obligations to third-party investors or bondholders. Since the Reimbursement Agreement does not appear to meet either of these criteria, an enforceable obligation does not exist. Therefore, the OFA balance available is being increased by \$19,611,973.

- The request to restrict funds totaling \$3,469,971 was not allowed; however, based on further information provided during the Meet and Confer process, Finance is reversing \$1,055,408 of the adjustments as discussed below:
 - The 2002 Housing Set Aside Loan in the amount of \$1,055,408. The loan agreement requires that a reserve account be maintained solely for the purpose of making payments on the loan. Therefore, Finance is reversing its adjustment of \$1,055,408.
 - The Ontario Airport Tower project escrow account in the amount of \$2,414,563. Based on our review of the Owner's Participation Agreement, the former RDA was not required to maintain an escrow account for the project. During the Meet and Confer process, the Agency did not object to this adjustment. Therefore, Finance continues to increase the OFA balance available by \$2,414,563.
- The request to retain funds for assets that are not cash or cash equivalents in the amount of \$1.6 million is not allowed. The former RDA advanced the City \$1.6 million for the purchase of the Saris-Regis Group properties. It is our understanding that no contract or repayment schedule is in place between the former RDA or the Agency and the City. Without a valid contract or repayment schedule, this loan is considered a 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 increased by \$1.6 million.
- The request to retain funds totaling \$2,083,298 was not allowed. During the Meet and Confer process, the Agency provided clarifying information that the funds requested are related to the county auditor-controller adjustment pursuant to HSC section 34186 (a) on the ROPS III January 2, 2013 distribution. Therefore, Finance is reversing its adjustment of \$2,083,298.

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. Finance maintains that the following adjustment is appropriate:

- Properties valued at \$18,437,315 were transferred to the City of Ontario (City). Based on our review of the Cooperate Agreement between the City and the Agency, it does not appear that these assets were transferred for governmental use, nor was the transaction approved by the Oversight Board or Finance.

Because these properties are not considered cash or cash-equivalent assets, the value of the properties has not been included in the amount available for distribution to the affected taxing entities. However, the Agency should reverse the transfer of properties and recover these assets from the City. Pursuant to HSC section 34191.5, within six months after receiving a Finding of Completion from the Finance, the Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan (LRPMP) that addresses the disposition and use of the real properties of the former redevelopment agency (RDA). The Agency should include these properties in the inventory of all former RDA properties and describe the planned disposition of each asset in its LRPMP.

The Agency's OFA balance available for distribution to the affected taxing entities is \$50,326,258 (see table below).

Available Balance per DDR:	\$ (4,411,774)
Finance Adjustments	
Add:	
Disallowed transfers	\$ 50,723,469
Requested restricted balances not supported	2,414,563
Adjustment for non cash or cash equivalents	1,600,000
Total OFA available to be distributed:	\$ 50,326,258

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. John Andrews, Economic Development Director, City of Ontario
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office