



August 29, 2013

Mr. William Fulton
Director, Planning and Neighborhood Restoration Department
City of San Diego
1222 First Avenue, MS 501
San Diego, CA 92101-4154

Dear Mr. Fulton:

Subject: Other Funds and Accounts Due Diligence Review

The City of San Diego Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on May 29, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). However, Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Procedures 2 and 3 – Assets transferred to the City of San Diego (City) in the amount of \$121,300,276 should be increased to \$142,367,046. In the DDR Exhibit A-1 and B, it identifies multiple transfers between January 1, 2011 through January 31, 2012. Finance determined the following transfers do not meet the definition of an enforceable obligation:

Exhibit A-1

- Item No. 1 – Ballpark Cooperation Agreement which transferred \$11,322,000 in cash to the City in August 2011. Pursuant to HSC section 34171 (d) (2), agreements between the City and the former redevelopment agency (RDA) are not enforceable obligations.
- Item Nos. 2 through 4 – Community Development Block Grant payments totaling \$3,294,500. The payments are not Agency obligations, but rather obligations between the City and United States Department of Housing and Urban Development (HUD).

- Item Nos. 5, 9 and 11 – City Loan payments totaling \$1,007,407. No documents received support that the following transfers were required by an enforceable obligation.
- Item Nos. 6 and 8 – Section 108 payments are only partially adjusted totaling \$211,422. The payments associated with the Naval Training Center are not allowed as the obligation lies with the City, not the Agency.
- Item Nos. 7 and 14 – HUD payments totaling \$35,170. These payments do not appear to be obligations to the Agency. In addition, the transfer for Item No. 14 occurred in January 2012; however, payment was never requested or approved on the ROPS for the period January through June 2012.
- Item No. 15 – City Project payments in the amount of \$196,271. No documents received support that the following transfer was required by an enforceable obligation.
- Item No. 16 – Convention Center payment in the amount of \$2,000,000. This transfer occurred in the ROPS period of January through June 2012; however, payment was never requested or approved on the ROPS. In addition, no documents received support that the following transfer was required by an enforceable obligation.

Exhibit B

- Item Nos. 1 and 2 – Convention Center payments totaling \$3,000,000. No documents received support that the following transfer was required by an enforceable obligation.

Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by a total of \$21,066,770.

- Procedure 8 – Balances legally restricted for the funding of an enforceable obligation totaling \$10,538,893. The Agency's request to retain \$10,538,893 in current unencumbered OFA balances to cover future obligations is not allowed. In prior ROPS periods, the Agency received sufficient funding to cover the requested amounts for enforceable obligations. Therefore, the Agency has not demonstrate an immediate need to retain these funds.

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), requesting funding in one period to assist with uneven debt service payments over a two period span, 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.

Since the Agency has not demonstrated an immediate need to retain unencumbered OFA balances and possesses alternatives to address short term cash flow shortages, Finance deems it is not necessary for the Agency to retain \$10,538,893. Therefore, the

OFA balances available for distribution to the taxing entities will be adjusted by \$10,538,893.

- Procedure 9 – Balances requested to be retained totaling \$124,774,146 should be adjusted to \$86,199,735. Specifically:
 - For the January through June 2012 ROPS I period, the Agency requested and received approval for enforceable obligations in the amount of \$80,214,786. However, the Agency did not spend \$27,644,450 of the requested Reserves and Other funding sources by the end of the ROPS I period. The Agency was able to provide support confirming that \$5,932,704 was spent after June 30, 2012. However, no supporting documentation was provided for the remaining \$21,711,746.

Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by \$21,711,746 to account for the Reserve and Other funds remaining from the ROPS I period. To the extent these items are enforceable obligations, the Agency may request Redevelopment Property Tax Trust Fund (RPTTF) on a future ROPS.

- For the July through December 2012 ROPS II period, the Agency received a RPTTF distribution in the amount of \$10,435,515 on June 1, 2012. This cash amount was included in the DDR's Procedure 5 – Assets held by the Agency as of June 30, 2012. Since this amount has already been approved through the ROPS, it should not be remitted at this time. Exhibit H of the DDR lists the items for which funding is requested to be retained for fiscal year 2012-13. Exhibit H makes an offset for the ROPS II RPTTF distribution. As a result, the DDR does not appropriately allow for the retention of the funds necessary to pay approved ROPS II expenditures. Therefore, Finance will make an adjustment of \$10,435,515 to account for the amount that was incorrectly offset within the OFA DDR.

In addition, the Agency is requesting to retain balances of \$43,729,536 in Reserves and Other funding sources approved on ROPS II. However, during the ROPS 13-14A period, the Agency was required to report their ROPS II actual expenditures on the prior period adjustment form. On the prior period adjustment form, the Agency reported that only \$18,029,789 in Reserves and Other funding was actually spent. Therefore, the remaining \$25,699,747 should be available for distribution to the taxing entities.

The OFA balances available for distribution to the taxing entities from the ROPS II period will be adjusted by \$14,985,296 (-10,435,515 + \$25,699,747).

- On the January through June 2013 ROPS III, the Agency requested Reserve funding in the amount of \$7,418,392. However, only \$6,929,815 was approved on the ROPS; therefore, \$488,577 is not allowed to be retained. In addition, the Agency requested an additional \$1,388,792 for administrative costs. This amount is over the administrative cap for the period and is not allowed. Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by \$1,877,369 (\$488,577+\$1,388,792).

If you disagree with Finance's adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's OFA balance available for distribution to the affected taxing entities is \$132,986,254 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 62,776,180
Finance Adjustments	
Add:	
Disallowed transfers to the City:	\$ 21,096,770
Adjustment to balance requested for retention beyond FY 2012-13:	10,538,893
Adjustment to balance requested for FY 2012-13:	38,574,411
Total OFA available to be distributed:	\$ 132,986,254

Absent a Meet and Confer request, 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, please 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.

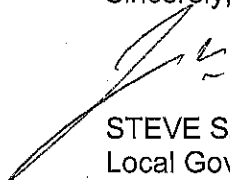
In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

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Pursuant to HSC section 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 Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Jeff Graham, President of Civic San Diego, City of San Diego
Mr. Jon Baker, Sr., Senior Auditor and Controller Manager, San Diego County
Ms. Nenita DeJesus, Senior Auditor and Controller Accountant, San Diego County
California State Controller's Office