



April 26, 2013

Mr. Stephen Conway, Director of Finance  
City of Los Gatos  
110 East Main Street  
Los Gatos, CA 95030

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 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Los Gatos 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 22, 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 9, 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:

- Our review indicates Finance did not make any adjustments to the OFA balance available for distribution per the DDR; however, the Agency is requesting to retain \$6,356,550 of OFA balances (reported in Procedures 2 and 3) as discussed below:
  - The Agency contends the transfer of \$3,011,963 was made for expenditures the City of Los Gatos (City) incurred for construction of a public library pursuant to an 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 (RDA) 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. Therefore, the transfer was not made pursuant to an enforceable obligation and retention of OFA balances is not permitted.

To the extent the items are enforceable obligations, the Agency should list the items on a Recognized Obligation Payment Schedule (ROPS) for Finance's review and approval.

- o The Agency expressed concerns related to reaching its tax increment cap in fiscal year 2025-26 and not having the ability to reimburse the City for debt service in future periods and requests to retain OFA balances. AB 1484 does not authorize the retention of funds but for limited circumstances. Since the Agency's request to retain funds based on stated limitations in the former redevelopment agency's tax increment is not an authorized type of retention under AB 1484, Finance cannot authorize the request. Further, it is Finance's expectation that ABx1 26/AB 1484 allows enforceable obligations to be listed on the ROPS and payable out of available Redevelopment Property Tax Trust Fund until such obligation has been satisfied.

As such, the Agency's OFA balance available for distribution to the affected taxing entities remains \$6,726,146. 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.

Mr. Conway  
April 26, 2013  
Page 3

Please direct inquiries to Evelyn Suess, Supervisor or Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

STEVE SZALAY  
Local Government Consultant

cc: Mr. Erwin Ordonez, Senior Planner, City of Los Gatos  
Ms. Irene Lui, Controller Treasurer, Santa Clara County  
California State Controller's Office