



MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state "[Agency Name] Request to Meet and Confer". Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance's determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance's determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance's website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance's Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

☒ Successor Agency ☐ Housing Entity

AGENCY NAME: Successor Agency to the Santa Clara Redevelopment Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

☐ Housing Assets Transfers ☒ Due Diligence Reviews ☐ ROPS Period _____

DATE OF FINANCE'S DETERMINATION LETTER: August 29, 2013

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

☒ Meeting at Finance ☐ Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) *(Must be specific.)*

See Attachment 1

B. Background/History *(Provide relevant background/history, if applicable.)*

See Attachment 1

C. Justification *(Provide additional attachments to this form, as necessary.)*

See Attachment 1

Agency Contact Information

Name: Julio Fuentes

Title: Executive Officer

Phone: 408-615-2210

Email: manager@santaclaraca.gov

Date: September 6, 2013

Name: Gary Ameling

Title: Director of Finance

Phone: 408-615-2345

Email: gameling@santaclaraca.gov

Date: September 6, 2013

Department of Finance Local Government Unit Use OnlyREQUEST TO MEET AND CONFER DATE: ☐ APPROVED ☐ DENIED

REQUEST APPROVED/DENIED BY: _____ DATE: _____

MEET AND CONFER DATE/TIME/LOCATION: _____

MEET AND CONFER SESSION CONFIRMED: ☐ YES DATE CONFIRMED: _____DENIAL NOTICE PROVIDED: ☐ YES DATE AGENCY NOTIFIED: _____

Attachment 1

Successor Agency to the Santa Clara Redevelopment Agency
Meet and Confer Request
Other Funds Due Diligence Review

A. Summary of Disputed Issues

The Department of Finance issued a determination letter dated August 29, 2013 on the Other Funds Due Diligence Review submitted by the Successor Agency to the Redevelopment Agency of the City of Santa Clara ("Successor Agency") on June 17, 2013 determining that the Successor Agency's available cash balance for distribution to the taxing entities is \$26,730,410. The determination letter also states that the City of Santa Clara has received over a million dollars of revenues per month from assets that were transferred to the City from the former RDA. The Department determination letter states that revenues from the properties are considered Agency funds and should be available to pay enforceable obligations. The Successor Agency disputes the total amount of funds determined to be available and also disputes the Department's findings with regards to rent collected by the City after June 30, 2012. The Successor Agency agrees that it has available cash of about \$2.7 million.

B. Background/History

The Other Funds Due Diligence Review includes as cash assets rent payments on property that was conveyed for value by the former RDA to the City in March 2011. The rent payments are for the period January 1, 2011 through January 31, 2012 as well as rent payments for the period February 1, 2012 through June 30, 2012. The rent payments are for properties including the Great America Theme Park, the Hilton Hotel, the Techmart Office building, the Gateway property, and the Hyatt Regency Hotel. All of the rent payments at issue are for properties that, except for the Theme Park, were originally acquired by the City of Santa Clara. The City acquired the properties in the 1960s to the 1980s with General Fund tax and utility revenues. The City subsequently transferred the properties to the RDA in exchange for a revenue stream of ground lease payments in lieu of cash payments of tax increment. None of the properties, with the exception of the Hilton Hotel property, were acquired with tax increment revenues, including the Theme Park which was acquired with revenue bond proceeds repaid from the lease and operating revenues received from the Theme Park. From the inception of the leases at issue, many of which date back to the 1980s and 1990s, the RDA, pursuant to cooperation agreements entered into at the time the City conveyed the property to the RDA, has paid the rent received from the property to the City for General Fund uses as consideration for the City conveyance of the properties. Effectively, the RDA held the properties in trust for the benefit of the City, passing through to the City all revenue streams associated with the properties. As with any trust arrangement, the City expected to receive the fee interest in the properties at the end of the term of the RDA, in accordance with the Redevelopment Law in effect at the time the City conveyed the properties to the RDA. The City has always and continues to utilize the lease payments it receives to fund core government services, including police and fire services.

The Other Funds DDR also includes in the cash assets available for distribution \$2,027,717 in rent payments received by the Sports and Open Space Authority (SOSA) related to property that always has been owned by SOSA and continues to be owned by SOSA. SOSA owned the property known as Fairway Glen (site of a former golf course) and leased three parcels of the property to a private

developer for the development of three multi-family residential developments. As a result of issues raised by the private developer's financing partners in the early 1990s, SOSA and the private developer renegotiated the terms of their original ground lease to create a tiered lease structure whereby SOSA leased the properties to the former RDA, and the former RDA subleased the properties to the private developer. The former RDA was merely a pass through entity between SOSA and the private developer to allow the private developer to access capital markets for financing. In accordance with the terms of the ground lease and a Cooperation Agreement entered into between SOSA and the former RDA, the RDA was required to provide all rents to SOSA and SOSA assumed all liability for the property.

The Other Funds DDR also includes as cash assets available for distribution to the taxing entities, \$1,000,452. These funds represent two transfers of cash made by the City from General Fund revenues to assist with redevelopment sponsored projects. In 2001, the City transferred to the RDA \$114,500 to assist with the development of the Youth Soccer Park. Although the funds were transferred to the RDA in 2001, that phase of the Youth Soccer Park project was not completed and the funds are the property of the City. The City also transferred \$885,952 to the RDA in 2006 to assist with the Downtown Revitalization efforts. This project was also not completed and these funds were never used by the RDA. These funds represent General Fund revenues that are the property of the City. These funds do not represent cash assets of the former RDA or the Successor Agency and thus are not available for distribution to the taxing entities.

C. Justification.

The Other Funds Due Diligence Review attempts to invalidate agreements that were entered into long before dissolution commencing on January 1, 2011 although there is nothing in the Dissolution Act granting DOF authority to invalidate such agreements. The Dissolution Act invalidates most agreements between the former RDA and the City that created the former RDA, effective February 1, 2012. However, the Department's determination attempts to invalidate those agreements effective January 1, 2011, before the Dissolution Act was enacted, and by that means redistribute City General Fund revenues to the taxing entities. The properties, with the exception of the Hilton Hotel property, were not acquired with tax increment revenues and the former RDA did not provide tax increment revenue subsidies to the developers of the property. Rather the RDA acted as a conduit and trustee for the City in the leasing of City assets in order to provide the City with a source of General Fund revenue to reduce the City's dependence on property and sales tax. The Dissolution Act was not designed to reallocate General Fund revenue, nor does it authorize such a reallocation.

All of the properties generating the lease revenues, except the Theme Park, were originally acquired by the City and transferred to the RDA pursuant to Health and Safety Code Section 33396 which continues to remain in full force and effect. Health and Safety Code Section 33396 allowed a redevelopment agency to acquire property from a public entity if requested to do so by the legislative body that created the redevelopment agency. Pursuant to Section 33396, at the discretion of the legislative body, all of the lease or sales proceeds from the property could be paid to the community or the public entity from which the property was acquired. It is important to note that this section makes clear that the discretionary actions regarding the transfer of the property and the determination that the lease revenues be paid to the community are to be taken by the City Council, not the Redevelopment Agency Board. This section expresses a clear legislative intent to allow cities to use their redevelopment agencies as conduits and trustees for

the transfer of property to private parties while preserving the benefits of that transfer to the city. The Cooperation Agreements entered into between the City and the former RDA amplified the intent of the Section 33396 by stating explicitly that the lease revenues paid to the City pursuant to the agreements were to be treated as General Fund revenues of the City and could be used for general municipal purposes. Many of these agreements have been in place for over 25 years. Nothing in the Dissolution Act repeals or nullifies Section 33396.

The purpose of the Dissolution Act is to provide the taxing entities with the property taxes that were otherwise diverted to redevelopment agencies as tax increment. It was not to provide the taxing entities with a windfall gain obtained from the prudent investment by the City of General Fund resources in a manner designed to provide ongoing revenues to the City's General Fund. The Department's inclusion of lease revenues in the Other Funds DDR will result in a gift of public funds to the taxing entities. The taxing entities did not make any investments in these properties and did not forego any funds as a result of the former Redevelopment Agency's agreement to pay to the City the lease payments. Rather the City is essentially being ordered to forfeit its assets, the land it legally acquired, without compensation since the effect of the determination would be an impairment of the City's compensation agreement entered into with the Redevelopment Agency regarding the conveyance of City owned property.

With regards to the SOSA property, the Department's determination would require that SOSA continue to allow the use of its property without the benefit of any rent revenue. The Department's determination would set aside one portion of the agreements between SOSA and the RDA, the Cooperation Agreement, but would not set aside the Ground Lease, thus providing a lopsided equation that effectively results in a taking of SOSA's property for the benefit of the taxing entities. This position cannot be sustained under any theory and is not upheld by the provisions of the Dissolution Act. If the Cooperation Agreement between SOSA and the RDA is invalid under the provisions of Section 34171(d)(1) then the Ground Lease between SOSA and the RDA must also be invalid, in which case the sublease with the developer becomes a direct lease between SOSA and the developer and the rent revenue is the property of SOSA not the former RDA.

Requiring the City to return the lease payments would also result in a violation of the State Constitution. Under Section 25.5(a)(3) of Article XIII of the California Constitution, the Legislature is prohibited from enacting any statute to change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring. An unwinding of the March 2011 conveyance in conjunction with the application of the provisions of the Dissolution Act that nullifies agreements between the City and the former RDA effective February 1, 2012 and a redistribution of the lease revenues to the taxing entities would result in a violation of Section 25.5(a)(3) of Article XIII of the California Constitution because it would result in an illegal windfall to other taxing agencies to the detriment of the City and the City's General Fund.

The Other Funds Due Diligence Review also should not include the rent payments since pursuant to Health and Safety Code Section 34179.5, the Other Funds Due Diligence Review is only to include items that were "transferred" as that term is defined in subsection (b)(3). Transferred for purposes of the Due Diligence Review does not include items that were transferred for goods or services. The Cooperation Agreements entered into between the City and the former RDA are contracts for goods and

services, the City conveyed the properties in consideration for the RDA agreeing to pass through to the City the lease revenues received from the properties. To attempt to invalidate these agreements results in a taking of City property without compensation.

Finally, the Department's determination makes statements about rent revenues received after June 30, 2012, although the Other Funds DDR by statute only covers the period until June 30, 2012. The Department's statements with regards to these post June 30, 2012 rents are not properly the subject of this determination and should not be included in the determination letter. Additionally, the Department makes general statements about the legality of transactions between the City and the former RDA without any support for these statements and with full knowledge that the validity of these agreements is the subject matter of pending litigation to which the Department is a party. The Department's statements are intended to prejudge the outcome of that litigation without providing the Successor Agency or the City with the opportunity to present its case. These statements are inappropriate and must be removed from the Department's final determination.