STAFF REPORT
Successor Agency Special Meeting Agenda
October 24, 2013

TO: Randal J Mendosa, Successor Agency Secretary
FROM: Larry Oetker, Community Development Director, David Loya, Community Development Deputy Director
DATE: October 17, 2013

SUBJECT: Consider authorizing an installment plan pursuant to the Department of Finance (DOF) determinations of the Due Diligence Reviews (DDR's), and adopt Successor Agency Resolution No. 02-1314.

RECOMMENDATION: Staff recommends the Successor Agency Board:
1. Consider terms for the installment plan proposal to the Department of Finance;
2. Adopt Resolution 02-1314 authorizing the City Attorney to draft, and the Successor Agency Secretary to sign, an installment plan based on the terms included as Exhibit 1;
3. Direct staff to transmit the installment plan to the Department of Finance (DOF) and confer as necessary; and
4. Take other actions as required.

INTRODUCTION: The Successor Agency (SA) was ordered to repay a total of $4,551,568 of disallowed transfers from the former Redevelopment Agency (RDA) to the City in its Housing and Other Assets Due Diligence Reviews (DDR's). Staff recommends the SA adopt the installment plan outlined in Resolution No. 02-1314 and direct staff to work with the DOF to formalize the agreement.

DISCUSSION: The SA was ordered to repay $2,415,359 on December 15, 2012, related to the Housing DDR for disallowed transfers from the former RDA to the City (Attachment C). The SA was also ordered to repay $2,126,209 on June 6, 2013, related to the Other Assets DDR (Attachment D). The total demand owing to the taxing entities from these demands is $4,551,568.

Staff replied timely to both of these demands indicating the SA's intent to repay a portion of the demand with funds on hand and to enter an installment plan for the balance. Staff has continued to work with DOF staff to determine the parameters of a practicable and acceptable installment plan. Notwithstanding our engagement with the DOF, on October 9, 2013, the SA received a 30-day notice to repay the amounts demanded in the Other Assets DDR or enter a payment plan. Failure to do so would trigger the "claw back" provisions, whereby the DOF would seek repayment through sequestering sales and/or property tax from the City.

The SA has limited resources with which to enter an installment plan. The City Council is considering an item in a special meeting on this same date to commit funds necessary to implement an installment plan. Without this commitment, the SA will not be able to satisfy the full demand.

Staff has worked out an installment plan that it believes the SA and City can satisfy. In brief, it amounts to remitting amounts currently held, then committing to a $300,000 per year payment for 11 years. The City may make early payments or fund the remaining balance at any time.

While this proposal establishes a moderately long term, it does not over commit City's finite resources. Staff believes it is important to enter a payment plan that is feasible under poor case scenarios. Table A, illustrates the timeline for repayment based on the terms in the resolution.

Table A. Proposed Installment Plan

Year	FY	Annual Payment	Cumulative Payment	Source
Remitted	2013	$ 489,078	$ 489,078	SA Retained Funds
0	2014	1,000,000	1,489,078	SA Transferred Funds On Hand
1	2015	300,000	1,789,078	Sale of Sandpiper Units
2	2016	300,000	2,089,078	Sale of Sandpiper Units
3	2017	300,000	2,389,078	Sale of Sandpiper Units in part
4	2018	300,000	2,689,078	City
5	2019	300,000	2,989,078	City
6	2020	300,000	3,289,078	City
7	2021	300,000	3,589,078	City
8	2022	300,000	3,889,078	City
9	2023	300,000	4,189,078	City
10	2024	300,000	4,489,078	City
11	2025	$ 62,490	$ 4,551,568	City

BUDGETARY/FISCAL IMPACT: The SA would transfer all cash assets currently held to satisfy the demand.

ATTACHMENTS:

A. Resolution 02-1314
   Exhibit 1 - Terms Sheet for Repayment of DDR Demands
B. DOF letter of October 9, 2013
C. DOF letter of December 15, 2012, regarding the Housing DDR
D. DOF letter of June 6, 2013, regarding the Other Assets DDR

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE ARCATA COMMUNITY DEVELOPMENT AGENCY APPROVING AN INSTALLMENT PAYMENT PLAN TO BE OFFERED TO THE DEPARTMENT OF FINANCE

WHEREAS, the City Council of the City of Arcata created the Arcata Community Development Agency and adopted the first Redevelopment Implementation Plan in 1983 for the purpose of considering and pursuing redevelopment activities in the community pursuant to the Community Redevelopment Law ("CRL"), Health and Safety Code §§ 33000 et seq.

WHEREAS, pursuant to Health and Safety Code Section 34179.5, the Successor Agency completed due diligence reviews (DDR) for its housing fund and for its other assets fund to determine unobligated balances available for transfer to the taxing entities.

WHEREAS, based on the DDRs, the California Department of Finance (DOF) issued final determinations demanding that the Successor Agency remit $2,415,359.00 for the Housing DDR and $2,126,209.00 for the Other Assets DDR.

WHEREAS, Health and Safety Code section 34179.6(h)(3) authorizes the DOF to accept an installment payment plan to satisfy outstanding DDR balances when it determines that full payment of such balances is not currently feasible or would jeopardize the ability of the Successor Agency to pay enforceable obligations in a timely manner.

WHEREAS, the Successor Agency currently does not have the financial resources to make full payment of the DDR balances, or to do so would jeopardize the ability of the Successor Agency to pay enforceable obligations in a timely manner.

WHEREAS, in electing to act as successor to the Arcata Community Development Agency as provided in Health and Safety Code Sections 34173 and 34176, the City Council expressly recognizes and reaffirms the statutory limitation on the City and the City Council's liability in such actions. Nothing in this Resolution shall be construed as a commitment, obligation, or debt of the City or any resources, funds or assets of the City to fund the Successor Agency.

NOW THEREFORE, BE IT RESOLVED by the Successor Agency to the Arcata Community Development Agency as follows:

1. The above recitals are true and correct and incorporated herein.

2. The Successor Agency Treasure, Secretary and Attorney are directed to draft, execute and offer to the Department of Finance an installment payment plan based on the terms set out in Exhibit 1, attached hereto and incorporated herein, in order to satisfy the DOF final determinations concerning the DDR balances.

3. The Successor Agency staff is hereby directed and authorized to take all action as required to implement said installment payment plan upon its acceptance by the DOF.

This Resolution shall be effective upon adoption.

DATED:

ATTEST:

Secretary, Successor Agency to the
Community Development Agency of the
City of Arcata

APPROVED:

Chair, Successor Agency to the
Community Development Agency of the
City of Arcata

SECRETARY'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of **Resolution No. 02-1314**, passed and adopted at a regular meeting of the Successor Agency to the Community Development Agency of the City of Arcata, County of Humboldt, State of California, held on the 24th day of October 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

Secretary, Successor Agency to the
Community Development Agency of the
City of Arcata

EXHIBIT 1

DDR BALANCE INSTALLMENT PLAN TERMS

EXHIBIT 1

CITY OF ARCATA SUCCESSOR AGENCY
TO THE COMMUNITY DEVELOPMENT AGENCY

Due Diligence Review Repayment Plan Term Sheet

October 24, 2013

PURPOSE: Satisfy the Department of Finance (DOF) demands for the Housing and Other Assets Due Diligence Reviews.

FUNDING SOURCE: Various

AMOUNT:

Housing DDR:	$2,415,359
Other Assets DDR:	$2,126,209

TERM: 12 years

PAYMENT:

SA has remitted $489,078 to date
SA will remit $1,000,000 within 30 days of DOF acceptance of payment plan for its FY 2013/14 payment
SA will commit to $300,000 per year payments annually by March 1 beginning in FY 2014/15

KEY CONDITIONS:

1. SA may submit prepayment in any amount at any time

<011>

Attachement B
SA SR 10-24-13

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

October 9, 2013

Mr. David Loya, Community Development Deputy Director
City of Arcata
736 F Street
Arcata, CA 95521

Dear Mr. Loya:

Pursuant to Health and Safety Code (HSC) section 34179.6 (f), the City of Arcata Successor Agency (Agency) was ordered by the California Department of Finance (Finance) on June 6, 2013 to remit to the county auditor-controller $2,126,209 in unencumbered other funds and accounts.

According to our records, the Successor Agency has yet to remit the ordered sum. Based on the information provided during the Agency's Other Funds and Assets Due Diligence Review, we understand that of the ordered outstanding amount due $2,068,997 resides with the city or the county that is performing the duties of the Agency and $57,212 resides with the Agency. If this is not correct, and the Agency has remitted the full ordered sum, please provide proof of payment to both Finance and the county auditor-controller. In addition, if the unencumbered other funds and accounts do not reside with the city, county, or Agency as indicated above, please send the appropriate supporting documentation to Finance.

I strongly encourage the Agency to promptly remit the ordered sum to the county auditor-controller if you have not already done so. If for some reason the Agency cannot immediately remit the entire sum, HSC section 34179.6 (h) (3) authorizes Finance to review requests for an installment payment plan. If you wish to make installment payments, please notify your Agency's assigned Finance review staff immediately. Upon receipt of your request, Finance will work with your Agency to determine whether installment payments are appropriate, and whether a payment plan can be finalized within the next 30 days.

In the event that the full ordered sum is not remitted within the next 30 days, and no installment plan is requested, Finance will proceed with the following measures pursuant to Per HSC section 34179.6 (h):

For amounts to be remitted that have been transferred to the city or county that created the RDA, Finance will order the Board of Equalization to withhold an equivalent amount of sales and use tax distribution from the city or county that created the former redevelopment agency. Such withholding would likely begin in October 2013 and continue until the entire ordered sum has been withheld.

For amounts to be remitted that reside with the Agency, Finance will direct the withholding by the county auditor-controller of an equivalent amount of property tax from the amount of

Successor Agency 1-A

Redevelopment Property Tax Trust Fund (RPTTF) otherwise payable to the Agency. Such withholding would likely begin with the January 2014 RPTTF allocation and continue until the entire ordered sum has been withheld. Since the Agency maintains possession of these funds, the withholding should not hinder the Agency's ability to fund approved ROPS obligations.

Please note that based on an Agency's particular circumstances, Finance may not seek the remedies described above. However, the county auditor-controller may decide, at his or her own discretion pursuant to HSC section 34179.6 (h), to reduce the property tax allocation to the Agency or the local agency that currently possesses the sums in question.

Finance has no desire to seek any of the above remedies against either the Agency or the city or county that is performing the duties of the Agency. **However, if the Agency fails to remit the ordered sum to the county auditor-controller within 30 days of the date of this letter, and no installment plan is requested, Finance is prepared to utilize any of the above-described remedies provided for by law.**

If Finance does not immediately pursue the remedies described above, additional actions are still available to seek your compliance with the ministerial duties set forth in HSC section 34179.6. For example, Finance will determine if it is appropriate to file a petition for writ of mandate in the Sacramento Superior Court seeking an order for the Agency to remit the ordered sum to the county auditor-controller.

If you have questions regarding remittance instructions, please contact your county auditor-controller's office to ensure that they have reported the accurate remittance amount to Finance.

Sincerely,

[redacted]

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Ms. Janet Luzzi, Finance Director, City of Arcata
Mr. Shane Brinton, Successor Agency Chair, Successor Agency
Mr. Mark Wheetley, Oversight Board Chair, Oversight Board
Ms. Nancy Diamond, Attorney, Law Offices of Nancy Diamond
Mr. Joe Mellet, Auditor-Controller, County of Humboldt
California State Controller's Office

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. - GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 15, 2012

Mr. David Loya, Community Development Deputy Director
City of Arcata
736 F Street
Arcata, CA 95521

Dear Mr. Loya:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Arcata Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 11, 2012. Finance issued a LMIHF DDR determination letter on November 9, 2012. 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 November 28, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising an adjustment made in our previous DDR determination letter. Specifically, we are revising the following adjustment:

- Assets transferred in the amount of $1,858,432. Finance initially disallowed $753,570 of the $1,858,432 total cash transferred during March 2011 to the City of Arcata (City) because the amount was not supported by an enforceable obligation. Amounts allowed consisted of $600,000 for the Plaza Point Development (Plaza) and $504,862 for the Sandpiper Mobile Home Park (Sandpiper) projects. However, based on review of information and clarification provided by the Agency during the meet and confer, Finance is reversing its initial decision to allow $1,104,862 because the total transfer of $1,858,432 was not obligated by the redevelopment agency (RDA).

  The Sandpiper project's remaining obligation of $1,953,000 was not originally in the RDA's October 2010 agreement, in which City as the housing entity executed first and second amendments during September 2011 and June 2012, respectively. Additionally, the Plaza project's remaining obligation of $200,000 was not specified as being funded with LMIHF in the RDA's agreement executed in March 2011. Per HSC 34163 (c)(5), the RDA was not allowed to transfer funds out of the LMIHF, except to meet the minimum housing-related obligations that existed as of January 1, 2011. Therefore, the $1,858,432 transferred during March 2011 is not allowed.

Further, Finance continues to believe some of the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section

34179.6 (d) authorizes Finance to make these adjustments. We maintain the adjustment continues to be necessary for the following reason:

- Balances retained for an enforceable obligation in the amount of $250,000. Our review indicated the amount retained for a housing replacement project did not qualify as an enforceable obligation. According to the Agency, because the RDA demolished two housing units, the Agency is required to make available two housing units in compliance with HSC section 33413 (a). The project was not listed on any of the Agency's Recognized Obligation Payment Schedules and no contract has been executed. The Sandpiper project, which created this replacement housing obligation, was transferred to the City in March 2011. Obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that, "all rights, powers, duties, obligations and housing assets, ...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations to the extent any continue to be applicable. To allow such housing obligations as an on-going enforceable obligation of the Agency would require a transfer of tax increment for life, which directly is contrary to the wind down directive in ABx1-26/AB1484. Therefore, the amount is not allowed to be retained.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to $2,415,359 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	306,927
Finance Adjustments		
Add:		
Disallowed transfers		1,858,432
Retained balance not supported		250,000
Total LMIHF available to be distributed:	$	2,415,359

This is Finance's final determination of the LMIHF 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.

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 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 and Finance's Housing Assets Transfer letter dated August 31, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Beliz Chappuie, Supervisor or Cindie Lor, Lead Analyst at (916) 445-1546.

Sincerely,

[redacted]

STEVE SZALAY
Local Government Consultant

cc: Ms. Janet Luzzi, Finance Director, City of Arcata
Ms. Nancy Diamond, Attorney, Law Offices of Nancy Diamond
Mr. Joe Mellet, Auditor-Controller, County of Humboldt
California State Controller's Office

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. ▪ GOVERNOR

915 L STREET ▪ SACRAMENTO CA ▪ 95814-3706 ▪ WWW.DOF.CA.GOV

REVISED

June 6, 2013

Mr. David Loya, Community Development Deputy Director
City of Arcata
736 F Street
Arcata, CA 95521

Dear Mr. Loya:

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 Arcata 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 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 16, 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:

- Cash transferred in the amount of $4,493,798 was not supported by an enforceable obligation. Out of the $4,689,798 cash transferred from the former redevelopment agency (RDA) to the City of Arcata (City) during March 2011, $196,000 is an allowable transfer and $2,424,801 was from the 2003 Bond Proceeds. The cash transferred was intended for use on anticipated projects listed in a corresponding Public Improvement Agreement (PIA) between the City and former RDA, executed March 9, 2011. According to the Agency, most of the PIA projects did not move forward; therefore, the Agency was requesting to use cash transferred for the following projects noted in DDR, Schedule 3A:
    - Plaza Point Development Project: The DDR shows $100,000 was transferred for this project. The Agency requested to use the $100,000 to fund the former RDA's remaining obligation. The Agency provided that $100,000 was disbursed during December 2011; therefore, no obligation remains for this project and the transfer of $100,000 is permitted as it was made pursuant to an enforceable obligation.
    - Sandpiper Mobile Home Park: The Agency requested to use $1,953,000 in cash transferred to fund the remaining obligation. Under a loan agreement executed October 1, 2010, between the City, former RDA, and developer, the former RDA

committed $504,862 in RDA housing funds. The project was transferred to the City under the March 2011 PIA. The City, as the housing successor entity, subsequently executed two amendments to the agreement on September 7, 2011, and June 6, 2012, to commit a total of $1,953,000 in additional RDA funds. The City was not allowed to commit additional RDA funding towards the project after June 27, 2011. Therefore, $1,953,000 in cash transferred is not allowed as a transfer for this project.

For any amounts that remain outstanding from the original loan agreement dated October 1, 2010, the Agency may list the item for review by Finance on a Recognized Obligation Payment Schedule to be funded from the Redevelopment Property Tax Trust Fund.

- Mad River Parkway Business Center: The Agency requested to use $96,000 in cash transferred to fund the remaining obligation. The project was listed on the March 2011 PIA to be funded with RDA project funds. The City's contract with the third party was executed prior to June 27, 2011. Therefore, $96,000 in cash transferred is allowed to be used for this project.

- In addition to the projects noted in the DDR above, the Agency provided additional City contracts for the Happy Valley Master Plan, Little Lakes Master Plan, Downtown Sidewalks, and Somao Boulevard Streetscape projects in which the Agency contended were allowable uses of the cash transferred. Although the four projects were listed in the PIA, the contract terms either ended prior to the execution of the PIA or were executed after June 27, 2011. Therefore, the contracts provided for the four projects are not enforceable obligations.

For the amounts noted above not permitted as transfers, HSC section 34179.5 (c) (2) states 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, and indebtedness obligations as defined in subdivision (e) of Section 34171. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. As such, the OFA balance available will be increased by $2,068,997 ($4,689,798 - $196,000 - $2,424,801) and restricted balances will be increased by $2,424,801.

The Agency did not object to the following adjustments made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustments are appropriate:

- Balances retained for fiscal year 2012-13 administrative costs in the amount of $57,212. The Agency requested to retain $114,422 for administrative costs. According to the DDR, the Agency estimated $9,535 per month in administrative costs for the fiscal year. However, the administrative allowance for the period of January 1, 2013 through June 30, 2013 was part of the January 2013 Redevelopment Property Tax Trust Fund distribution. Therefore, $57,210 ($9,535 x 6) for the period June 1, 2012 to December

31, 2012 retention is allowed. The OFA balance available will be increased for the difference of $57,212 ($114,422 - $57,210).

- Finance identified invalid transfers to the City during March 2011, consisting of capital assets valued at $1,320,297 and an Arcata Theatre note receivable of $294,226. Because land and receivables are not considered cash or cash-equivalent assets, Finance made no adjustment to the available balance to the affected taxing entities. However, the Agency is required to reverse the improper transfer of assets and recover the assets from the City.

The Agency's OFA balance available for distribution to the affected taxing entities is $2,126,209 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed cash transfers:	$	2,068,997
Requested retained balance not supported:		57,212
Total OFA available to be distributed:	$	2,126,209

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,

[redacted]

STEVE SZALAY
Local Government Consultant

cc: Ms. Janet Luzzi, Finance Director, City of Arcata
Mr. Shane Brinton, Successor Agency Chair, Successor Agency
Mr. Mark Wheetley, Oversight Board Chair, Oversight Board
Ms. Nancy Diamond, Attorney, Law Offices of Nancy Diamond
Mr. Joe Mellet, Auditor-Controller, County of Humboldt
California State Controller's Office

This page intentionally left blank.