DEPARTMENT OF FINANCE

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

May 5, 2013

Ms. Debbie Potter, Development Manager
City of Alameda
2263 Santa Clara Avenue, Rm. 120
Alameda, CA 94501

Dear Ms. Potter:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Alameda Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 8, 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 29, 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 22, 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:

- Legally restricted assets in the amount of $124,081. Our review noted the following:

    - An amount of $18,623 was restricted for encumbered administrative expenses. These funds are partially allowed for retention under Procedure 8 for balances legally restricted to fund enforceable obligations. Our review indicates the Agency accrued $14,811 in administrative costs that were paid after June 30, 2012. The remaining amount requested was paid prior to June 30, 2012, and the documentation provided does not adequately support these as Agency costs. Therefore, Finance is reversing $14,811 of its adjustment and the OFA balance available for distribution will be increased by $3,812.

      Finance notes that amounts requested and approved in a Recognized Obligation Payment Schedule (ROPS) are effective only for the six-month period covered. To the extent the Agency does not expend funds approved and received on a ROPS until a subsequent period, the Agency should relist the unexpended amounts that need to be retained for those enforceable obligations on the subsequent ROPS with the funding source as "Reserves" or "Other" and an entry in the Notes section indicating the funds were received in a prior ROPS period.

- An amount of $105,458 was restricted for the East Bay Regional Park District. Finance previously determined these were future pass-through obligations. However, the Agency contends these are prior pass through amounts that are being held pursuant to a contract with a third party until the third party satisfies all requirements for distribution of these funds. Our review indicates these funds are restricted assets per a contract between the former Redevelopment Agency (RDA) and a third party executed on June 4, 1991. Therefore, Finance is reversing its adjustment of $105,458.

- The Agency's request to retain $818,912 to cover obligations is partially denied. The Agency claims these funds are needed to satisfy fiscal year 2012-13 obligations. For the January through June 2013 (ROPS III) period, Finance approved $6,690,763 and the County Auditor Controller (CAC) distributed $5,878,327 from the Redevelopment Property Tax Trust Fund (RPTTF). Additionally, the CAC made a $366,691 prior period adjustment pursuant to HSC section 34186 (a). This resulted in a $445,745 ($6,690,763 - $5,878,327 - $366,691) shortfall for the ROPS III period. Therefore, the Agency may retain $812,436 ($366,691 + $445,745) to ensure sufficient funds are available in the ROPS III period and the OFA balance available for distribution will be increased by $6,476 ($818,912 - $812,436).

  The Agency believes a deficit may occur in future fiscal years and requests to retain the remaining OFA balances. HSC section 34179.5 (c) (3) only allows for retention of funds needed to satisfy obligations for the current fiscal year. In addition, our review of the CAC's estimated RPTTF distribution for the July through June 2013 (ROPS 13-14A) period indicates the Agency will receive sufficient RPTTF to satisfy ROPS 13-14A debt service obligations. Therefore, the Agency will not be permitted to retain funds for the ROPS 13-14A.

  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 the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, 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.

- Finance identified a transfer of Land-Theater/Parking Garage valued at $19,981,611 from the former RDA to the City of Alameda (City). Per HSC section 34167.5, asset transfers from the former RDA to the City, which occurred after January 1, 2011, were deemed not to be in the furtherance of the Community Redevelopment Law and are thereby unauthorized. Since land is not considered cash or a cash-equivalent asset, Finance has made no adjustment to the available balance to the affecting taxing entities. These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

The Agency's OFA balance available for distribution to the affected taxing entities is $10,288 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Unallowed balances retained	$	3,812
Unsupported balances retained		6,476
Total OFA available to be distributed:	$	10,288

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 Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Fred Marsh, Controller, City of Alameda
Ms. Carol S. Orth, Division Chief, Tax Analysis, County of Alameda
California State Controller's Office