DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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

REVISED

August 26, 2016

Ms. Dawn Merchant, Finance Director
City of Antioch
P.O. Box 5007
Antioch, CA 94531-5007

Dear Ms. Merchant:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated May 1, 2013. A revision is necessary to comply with the peremptory writ of mandate issued in Sacramento County Superior Court Case No. 34-2015-80002092.

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Antioch Successor Agency (Agency) submitted an oversight board approved OFA DDR to the Finance on January 14, 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 April 1, 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 10, 2013 and a final determination letter was issued May 1, 2013.

According to the peremptory writ of mandate, Finance is required to determine whether the disputed transfers in the OFA DDR totaling $768,958 were properly made under the 2002 amendment to a loan agreement between the California Department of Boating and Waterways (DBW), the City of Antioch (City), and the former Redevelopment Agency of the City of Antioch (former RDA). Based on review of documents provided, the following adjustments were made to the balances available for allocation to the affected taxing entities:

- Transfers made to the City totaling $768,958 to fulfill the 2002 loan agreement is partially approved in the amount of $250,000.

  The transfers at issue consist of three transfers: (1) a $456,458 transfer made in March 2011; (2) a $62,500 transfer made in April 2011; and (3) a $250,000 transfer made in January 2012. According to the City and Agency, these transfers were made pursuant to a condition on the 2002 loan modification under which the City, former RDA, and DBW agreed that $2,500,000 in redevelopment funds would be committed to the Marina for ten years, of which $1,700,000 would be earmarked for the Marina Capital Outlay Fund.

Because there is no formal documentation of the City, former RDA, and DBW's final agreement, Finance looks at the City, former RDA, and DBW's past actions and 2002 reports by the City and DBW to determine if the transfers were required pursuant to the condition on the loan modification and authorized under Dissolution Law.

As described in the City's report, the following was a condition that may be imposed on the loan modification: "Affirm that the City is obligated to commit a minimum of $2,500,000 in [R]DA support over the next ten years (2001/02 to 2010/11) to this Marina, of which $1,700,000 would be earmarked to a capital outlay reserve fund for the Marina, that could only be used for needed capital outlay projects." DBW's report similarly stated that the above may be imposed as a condition to the loan modification. Beginning July 1, 2003, the former RDA transferred $62,500 every quarter (January, April, July, and October) to the City as payments toward this condition. From July 1, 2003 to January 1, 2011, the former RDA had paid a total of $1,937,500 toward this condition.

From the above, it appears that the City, former RDA, and DBW agreed that the former RDA would pay $2,500,000 in redevelopment funds to the City to commit to the Marina for ten years. The former RDA's payments were to be made in equal quarterly payments of $62,500 on January, April, July, and October, and $1,700,000 of the $2,500,000 would be earmarked by the City for the Marina Capital Outlay Fund.

Finance notes that the March 2011, April 2011, and January 2012 transfers combined with the former RDA's past transfers exceed the $2,500,000 total payment amount required to be paid by the former RDA under the condition to the loan modification. Under Dissolution Law the former RDA (now Agency) is only authorized to make required payments. Additionally, the former RDA was prohibited from modifying the payment terms of the loan modification. As a result, the obligation of the former RDA (now Agency) cannot exceed $2,500,000.

- In regard to the March 2011 transfer of $456,458, the City and Agency argue that this transfer was "necessary to bring the Marina Capital Outlay Reserve Fund to the required level." However, as of March 2011 the former RDA had regularly fulfilled its obligation to provide quarterly payments of $62,500 to the City such that the City received a total of $1,937,500, well above the $1,700,000 required to be placed in the Marina Capital Outlay Reserve Fund. The condition to the loan modification does not obligate the former RDA (now Agency) to pay to the City additional funds if the City failed to comply with its obligation to properly earmark the funds pursuant to the condition. Additionally, under Dissolution Law the former RDA was prohibited from modifying the payment terms of the loan modification in March 2011 and the Agency is prohibited from making payments above those that it is required to make. As a result, the March 2011 transfer is not allowed.

- In regard to the April 2011 transfer of $62,500, this transfer appears to have been made as a regularly scheduled payment required as part of the loan modification condition. As a result, this transfer is allowed.

- In regard to the January 2012 transfer of $250,000, it appears that the City and Agency allege this payment was necessary to cover the 2011-2012 payments required by the loan modification condition (i.e., July 2011, October 2011,

January 2012, and April 2012). Although only $62,500 was scheduled to be paid on January 2012, it appears the former Agency did not make its July 2011 and October 2011 payments to the City, and thus, $187,500 was due from the former RDA at that time. However, the former RDA was not authorized to modify the payment terms of the loan modification or pay more than what was required in January 2012. As a result, $62,500 of the $250,000 transfer is not allowed, the remaining $187,500 is allowed.

As authorized by HSC section 34179.6 (d) and as stated in Finance's May 1, 2013 OFA DDR determination letter, Finance maintains the remaining adjustments were appropriate.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to $783,783, as noted in the table below:

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	229,900
Finance Adjustments		
Add:		
Disallowed transfers	$	540,958
Request to retain balances not supported		12,925
Total OFA available to be distributed:	$	783,783

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. Since the Agency has already transmitted to the county auditor-controller the amount of funds identified in Finance's May 1, 2013 OFA DDR determination letter, the Agency should list the total amount of $250,000 on the upcoming Recognized Obligation Payment Schedule for the period July 1, 2017 through June 30, 2018 (ROPS 17-18) as a new line item to recover $250,000 of the previously transmitted amount. To the extent the Agency has past-due unpaid regularly scheduled payments required under the loan modification, the Agency may request funding for these past due amounts on the original ROPS line item for this obligation, however, such request cannot result in total payments for this obligation exceeding $2,500,000.

Please direct inquiries to Cindie Lor, Supervisor or Jeremy Bunting, Analyst at (916) 445-1546.

Sincerely,

for

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Steve Duran, City Manager, City of Antioch
Mr. Bob Campbell, Auditor-Controller, Contra Costa County