



November 30, 2015

Mr. Kevin Mizuno, Finance Manager
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

Dear Mr. Mizuno:

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 October 28, 2015. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Clayton Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on March 19, 2015. 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 October 28, 2015. 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 9, 2015.

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 adjustment was made:

- Assets transferred to the City of Clayton (City) totaling \$230,983 has been adjusted. Our previous review of the Agency's General Ledger showed the former redevelopment agency (RDA) transferred cash totaling \$230,983 to the City on November 30, 2011. During the Meet and Confer process, the Agency contended the transfer of \$41,825 (out of the \$230,983 in disallowed transfers identified by Finance) is proper as it relates to prior pass-through amounts owed to the City, which is considered an enforceable obligation. Additionally, the Agency claims the \$41,825 is duplicative of amounts already disallowed by the State Controller's Office (SCO).

Our review of the documentation provided by the Agency during the Meet and Confer indicates that during the formation of the RDA, the Clayton City Council took action under HSC section 33676 to receive two-percent of the tax increment allocated to the RDA annually. However, in 2009 the City discovered that no payments had been made to the City for the two-percent election agreement and requested the Contra Costa County Auditor-Controller (CAC) to calculate the outstanding principal balance owed to the City for amounts the City should have received. In 2010, the CAC calculated that amount to be \$501,899. Rather than require full payment from the RDA at that time, the

City agreed to four annual payments of \$125,475 beginning fiscal year 2010-11 and ending 2013-14.

During our initial review of the DDR, Finance allowed a pass-through payment totaling \$62,540 made in November 30, 2011. Additionally, Finance allowed the Agency's request to retain \$376,424 in other funds to fund this obligation (under Procedure 8). Lastly, a payment totaling \$62,738 was made in February 28, 2011 toward this obligation, which was not adjusted for in the DDR. Thus, bringing total payments made on the obligation to \$501,702 (\$62,540 + \$376,424 + \$62,738). As such, the obligation to pay the City for \$501,899 in pass-through payment in arrears requires an additional \$197 to satisfy the obligation and not \$41,825 as the Agency claims.

Finally, the Agency claims the \$41,825 is duplicative of amounts disallowed by the SCO. However, our review indicates the \$230,983 adjustment made by Finance was for transfers made on November 30, 2011 and not duplicative of the February 28, 2011 amounts accounted for in the DDR and the SCO's Asset Transfer Review.

Based on the above, the OFA available balance for distribution to the affected taxing entities is increased by \$230,786 for transfers made to the City on November 30, 2011. The transfers were not made pursuant to an enforceable obligation and are not permitted.

Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former 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 RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA.

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:

- The Agency's request to retain funds totaling \$1,480,339 for funding of agreements has been adjusted by \$475,000.

The Agency requests \$475,000 for the payment of a Fire Station Loan to the City. The loan resulted from a Purchase and Sale Agreement between the RDA and the City entered into on June 17, 1999 for the purchase of a site for the fire station. The agreement requires payments to be made annually until January 1, 2023.

Pursuant to HSC section 34171 (d) (2), an enforceable obligation does not include any agreements, contracts, or arrangements between the City and the RDA, except such was entered into on or before December 31, 2010 at the time of issuance of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations. As the Purchase and Sale Agreement was not made for the purpose of securing indebtedness obligations or for repaying any indebtedness

obligation, this item is not an enforceable obligation that requires the retention of funds.

However, pursuant to HSC section 34191.4 (b) (1), the Agency may be able to request repayment of this loan on a Recognized Obligation Payment Schedule once the Agency receives a Finding of Completion.

Therefore, the OFA available balance for distribution to the affected taxing entities will be increased by \$475,000.

The Agency's OFA balance available for distribution to the affected taxing entities is \$1,256,182 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$550,396
Finance Adjustments	
Add:	
Disallowed transfers to the City	230,786
Requested retained balances not supported	475,000
Total OFA available to be distributed:	\$ 1,256,182

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.

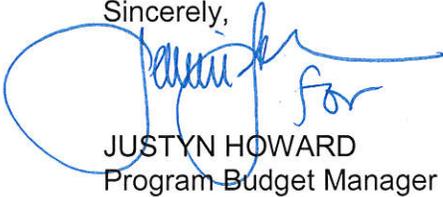
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain 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 SCOa 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 SCO's authority.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Justyn Howard for". The signature is stylized and includes a large circular flourish on the left side.

JUSTYN HOWARD
Program Budget Manager

cc: Ms. Laura Hoffmeister, Assistant City Manager, City of Clayton
Mr. Bob Campbell, Auditor-Controller, Contra Costa County