DEPARTMENT OF FINANCE

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

April 8, 2013

Mr. David Spilman, Interim Finance Director
City of Clearlake
14050 Olympic Dr.
Clearlake, CA 95422

Dear Mr. Spilman:

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 15, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Clearlake Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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 March 15, 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 March 28, 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:

- Properties transferred to the City of Clearlake (City) in the period between January and June 2011 with a book value of $3,284,946 is partially denied. HSC section 34179.5 (c) (2) only allows asset transfers within this period that are required by an enforceable obligation. Additionally, some of the properties do not meet the definition of governmental use per HSC section 34181 (a). Documentation provided do not support the transfers were required by an enforceable obligation. However, the asset referred to as City Hall 14050 Olympic Dr Parcel #039-530-21 valued at $1,880,238 meets the definition of governmental use as defined in the HSC section 34181 (a).

  During the Meet and Confer process, the Agency provided additional information for the following parcels showing that they were being used for a governmental purpose:

  - 6393 James St, Parcel #042-052-19 (book value of $84,000)
  - 6820 Old Hwy 53, Parcel #010-043-38-39 (book value of $541,818)
  - 6828 Old Hwy 53, Parcel #010-043-36 (book value of $375,000)
  - 6356 Armijo, Parcel #042-121-25 (book value of $120,000)
  - 6377 Armijo, Parcel #042-122-26 (book value of $55,000)

These parcels are part of the Corporation Yard, which stores construction equipment and materials, the reserve fire engine and equipment, and provides drainage purposes for the surrounding areas.

Therefore, the amounts of the governmental use parcels noted above have been reduced from the asset transfer total resulting in a book value of $228,890, which was inappropriately transferred to the City. Since these properties are illiquid, they are considered a non-cash asset of the RDA. Therefore, an offsetting adjustment is being made by the same amount to reflect that these are non-cash assets and not eligible for distribution to the affected taxing entities at this time. In effect, these adjustments balance out and do not affect the ending OFA available balance. The assets in question totaling $228,890 include the following:

- 14295 Lakeshore Dr, Parcel #040-092-08 (book value of $208,418)
- 6439 Vallejo, Parcel #042-123-11 (book value of $10,472)
- 6459 Vallejo, Parcel #042-123-31 (book value of $10,000)

One of the parcels was purchased with the intent to build a Visitor Center; however, the Visitor Center has not been constructed. The remaining two parcels were adjacent to the Corporation Yard; however, they are not part of the Corporation Yard. Since the parcels were not constructed and used for a governmental purpose, they are not eligible for transfer under HSC section 34181 (a); the intention to use the property for government purpose is not considered a permissible transfer under this HSC section.

Finance notes, however, that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, HSC section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

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 $0, as reported on the DDR.

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,

STEVE SZALAY
Local Government Consultant

cc: Ms. Maryna Smith, Account Clerk, City of Clearlake
Ms. Cathy Saderlund, Auditor-Controller, Lake County
Ms. Liz Martinez, Accountant II, Lake County
California State Controller's Office