DEPARTMENT OF FINANCE

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August 29, 2013

Mr. Donald McVey, Director of Finance and Administrative Services
City of Daly City Successor Agency
333 - 90th Street
Daly City, CA 94015

Dear Mr. McVey:

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 July 24, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Daly City Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on May 9, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on July 24, 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 August 13, 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 to the City of Daly City (City) from January 1, 2011 to January 31, 2012 in the amount of $5.75 million is not allowed. As further discussed in the following sections, the transfers consisted of $3.75 million for a loan repayment pursuant to a 1985 loan agreement between the former redevelopment agency (RDA) and the City and $2 million to the City's Water Utility Fund to pay for water system improvement projects.

    - As related to the $3.75 million loan repayment, the Agency contends that on April 16, 2012, the Oversight Board voted to recognize the 1985 loan between the former RDA and the City as an enforceable obligation and reauthorize the Agency to reenter into the loan agreement pursuant to HSC section 37178 (a). While HSC section 34178 (a) authorizes successor agencies to reenter into agreements, any agreement reentered into cannot conflict with the requirements set forth in HSC section 34171 (d), as ABx1 26 and AB 1484 did not specifically carve out an exception to the definition of an enforceable obligation nor did HSC section 34178 (a) not withstand HSC section 34171 (d). Therefore, the Oversight

Board had no legal basis to approve an action that directly conflicted with and violated the definition of an enforceable obligation. Even if Finance did not object to the specific Oversight Board action authorizing the Agency to reenter into agreements, the statute as a whole prohibits such an action from being validated if it conflicts with the definition of an enforceable obligation.

Additionally, the Agency contends the 1985 loan agreement meets the exception in HSC section 34171 (d) (2) because it was entered into to commemorate the various revolving loans made pursuant to an unwritten arrangement from the first two years of the former RDA's creation. However, the 1985 loan agreement does not meet this exception because it was not entered into within the first two years of creation of the former RDA nor does it specify which amounts, if any, were loaned within the first two years of creation. Furthermore, requests for payment were denied on the Recognized Obligation Payment Schedules (ROPS) for the January through June 2012 and July through December 2012 periods in Finance's letters dated May 3, 2012 and May 27, 2012. The items were also listed on the ROPS for the January through June 2013 and July through December 2013 period; however, no amounts were listed for payment. Therefore, the 1985 loan agreement is not an enforceable obligation and the amount transferred for payment is not allowed.

- The Agency contends the transfer to the City's Water Utility Fund was authorized by the former RDA's Board and the City Council under their adopted budgets for fiscal year 2010-11. Although the former RDA Board approved RDA funds to be transferred to the City's Water Utility Fund in fiscal year 2010-11, the Agency did not demonstrate a commitment of former RDA funds to any specific project or goods and services to be provided prior to June 28, 2011. Therefore, no enforceable obligation exists requiring the transfer of funds to the City's Water Utility Fund.

For purposes of the DDR, 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 1985 loan agreement between the former RDA and the City and the adopted former RDA and City budgets are not enforceable obligations pursuant to HSC section 34171 (d) (2). Since the transfers were not made pursuant to enforceable obligations, they are not permitted. Therefore, the OFA balances available for distribution to the taxing entities will be increased by $5.75 million.

The repayment of these loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, the loans should be placed on future ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

The Agency's OFA balance available for distribution to the affected taxing entities is $5.75 million (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed transfers to the City:	$	5,750,000
Total OFA available to be distributed:	$	5,750,000

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, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Rose Zimmerman, City Attorney, City of Daly City
Ms. Shirley Tourel, Senior Internal Auditor, County of San Mateo
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office