



May 3, 2013

Ms. Stacey Winton, Administrative Analyst II  
City of Davis  
23 Russell Boulevard, Suite 1  
Davis, CA 95616

Dear Ms. Winton:

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 27, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Davis Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 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 27, 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 17, 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:

- Disallowed asset transfers to the City of Davis (City) during the period of January 1, 2011 through June 30, 2012 in the amount of \$9,818,427 has been reduced to \$9,640,645. HSC section 34179.5 (c) (2) only allows asset transfers within this period that are required by enforceable obligations or meet the definition of governmental use. Specifically:
  - Transfer of cash to the City totaling \$5,431,669. Our review indicates the Agency transferred \$7,462,078 to the City. The City subsequently transferred \$2,030,409 back to the Agency. This transfer totaling \$5,431,669 for the March 15, 2011 Public Works Agreement (Agreement) between the City and the Agency is disallowed. The Agency claims the funds were provided to the City to carry out the Agreement to implement four project areas.

Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency 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 redevelopment agency 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. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

- o Transfer in the amount of \$487,868 in bond proceeds. Our review indicates the Agency transferred \$487,868 from the Redevelopment Agency (RDA) Operating Fund to the RDA Capital Fund to cover capital project expenses funded with bonds. However, as stated above, the transfer was not made pursuant to an enforceable obligation and is not permitted. For DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the transferred bond proceeds.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010. The bond proceeds requested for use were issued in March 2011.

- o Transfer in the amount of \$144,030 from the RDA Operating Fund to the City Self Insurance Fund to cover Other Post Employment Benefits liability. No documentation was provided to support this item. Therefore, this transfer was not made pursuant to an enforceable obligation and is not allowed. We note that based on review of the Comprehensive Annual Finance Report (CAFR), this amount represents the remaining balance of the former agency funds.
- o Transfer in the amount of \$177,782 from the RDA Operating Fund to the Other Non-Major Fund. Our review indicates this was a transfer among RDA funds and not a transfer to the City. Therefore, no adjustment is warranted.
- o Transfer of Commercial Rehab loans totaling \$52,080 to the City. The Agency contends that City Council Resolution No. 11-027 is a valid basis for this transfer. Our review concludes the transfer was not made pursuant to an enforceable obligation and is not allowed. Since these loan receivables are non-liquid, they are considered a non-cash asset of the Agency. Therefore, this transfer has no effect on the OFA balance available for distribution.
- o Transfer of properties totaling \$3,524,998 to the City. The Agency contends that City Council Resolution No. 11-027 is a valid basis for this transfer. Our review indicates this transfer was not made pursuant to an enforceable obligation and is not permitted. Since these properties are non-liquid, they are considered a non-cash asset of the Agency. Therefore, this transfer has no effect on the OFA balance available for distribution.

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.

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 redevelopment agency 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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$5,575,699 (in the table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Unauthorized transfers	\$ 9,640,645
Legally restricted assets	\$ (487,868)
Transfers considered non-liquid	(3,577,078)
<b>Total OFA available to be distributed:</b>	<b>\$ 5,575,699</b>

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

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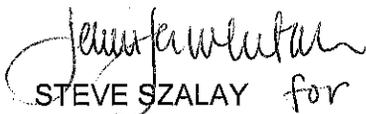
Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

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 for  
Local Government Consultant

cc: Ms. Katherine Hess, Community Development Administrator, City of Davis  
Mr. Howard Newens, Auditor-Controller, County of Yolo  
California State Controller's Office