



April 8, 2013

Mr. Edmund Suen, Finance Director
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303

Dear Mr. Suen:

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 East Palo Alto Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 10, 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 April 2, 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:

- Balances requested to be retained totaling \$921,409 should be adjusted by \$545,043. Specifically:
 - The Agency requested to retain \$475,200 for the Bay Road Infrastructure Improvements. This amount was approved on the January through June 2012 Recognized Obligation Payment Schedule (ROPS I). To date of this review, the Agency only paid \$3,706 for this obligation in January 2013 and \$471,494 remains unspent. The Agency claims it has relied upon the ROPS I approval and has incurred costs after June 30, 2012 for which the funds are needed; however, the Agency did not provide any additional documentation the funds were actually expended in the ROPS I period and the contract for the ROPS I funds was not entered into until November 2012 by the City of East Palo Alto since the Agency no longer has the authority to enter into contracts.

Per HSC section 34186 (a), differences between actual payments and past estimated obligations shall be reported on subsequent ROPS and shall adjust the amount to be transferred to the Redevelopment Obligation Retirement Fund. Although the Agency confirmed no funds were expended during the ROPS I period, the Agency reported on the Prior Period Adjustment worksheet of January through

June 2013 Recognized Obligation Payment Schedule (ROPS III) that all ROPS I funds had been expended during the ROPS I period. As such, the appropriate adjustment was not made by the County Auditor Controller for the ROPS III distribution. Therefore, the OFA available for distribution is increased by \$475,200 as no funds were spent for this item during the ROPS I period.

- o The Agency requested to retain \$38,548 for accrued sick leave and \$31,295 for accrued vacation leave of former RDA employees. These amounts were approved on ROPS I. The Agency reported on the Prior Period Adjustment page of the ROPS III that all ROPS I funds had been expended during the ROPS I period; however, they were not. As such, the appropriate adjustment pursuant to 34186 (a) for the ROPS III distribution was not made by the County Auditor Controller. Therefore, the OFA available for distribution will be increased by \$69,843.

To the extent the Agency believes the accrued sick and vacation leave are enforceable obligations, they may be included on future ROPS when they are payable.

In addition, Finance continues to make the following adjustment not disputed by the Agency during the Meet and Confer process:

- Total amount of assets held as of June 30, 2012 should be \$25,698,730. Our review identified additional assets in the amount of \$426,752 that were not included in the DDR. Therefore, the OFA balance available for distribution to the taxing entities will be adjusted by \$426,752.

The Agency's OFA balance available for distribution to the affected taxing entities is \$2,408,518 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,436,723
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance:	\$ 426,752
Requested retained balances not supported:	545,043
Total OFA available to be distributed:	\$ 2,408,518

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 section 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 Sues, Supervisor or Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Carlos Martinez, Economic Development Manager, City of East Palo Alto
Ms. Shirley Tourel, Deputy Auditor-Controller, County of San Mateo
California State Controller's Office