DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

August 29, 2013

Mr. Steve Toler, Assistant City Manager
City of Foster City
610 Foster City Blvd.
Foster City, CA 94404

Dear Mr. Toler:

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 May 2, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Foster City 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 29, 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 16, 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:

- Finance previously increased the total assets transferred to the City of Foster City (City) during the period from January 1, 2011 to June 30, 2012 from $0 to $4,386,317. The total transfers should be $1,368,510 ($1,272,382 + $76,559 + $19,569) as further discussed below:

    - Our review indicates that $1,272,382 was transferred to repay a general fund loan from the City to the Agency. This includes $1,115,697 in principal and $156,685 ($111,264 + $45,421) in interest. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency (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. 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, unless issued within two years of the former RDA's creation. These loans were issued after the first two years of the former RDA's creation. Therefore, the transfer was

not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by $1,272,382.

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

- Our review indicates $612,243 was transferred to the City for payments towards a cooperation agreement between the City and the former RDA for work conducted through a contract between the City and a third party. The Agency claims it transferred back $540,164 ($612,243 + $4,480 - $76,559), which is the original amount transferred plus interest earned less payments for the cooperation agreement. Our review indicates that the Agency did earn $4,480 in interest and that $540,164 was transferred back to the Agency in February 2012. However, the cooperation agreement between the City and the former RDA is not an enforceable obligation since 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 $76,559 was not paid pursuant to an enforceable obligation. We note that although this project was not denied for the January through June 2012 (ROPS I) period, the $76,559 is not part of the amount allowed for payment during the ROPS I period since these expenditures occurred prior to the ROPS I period. Therefore, the OFA balance available for distribution will be increased by $76,559.

- Our review also indicates $2,501,692 was transferred to the City for a cooperative agreement between the City and the former RDA entered into on April 18, 2011. Per this agreement, the Agency was to transfer unrestricted tax increment funds to the City for payments to the San Mateo Union High School District (District) pursuant to a June 27, 1991 stipulated judgment (Judgment). The Agency provided documentation showing that $2,229,500 was transferred back to the Agency in February 2012. This amount is the original amount transferred less a $237,500 payment to the District, $19,569 of interest income that was retained for administrative costs, and $34,692 to write off an unrealized gain. These are individually addressed as follows:

    - The Judgment included a structured payment schedule and per the schedule, the Agency made a $237,500 payment. This payment was made pursuant to an enforceable obligation and is permitted.

    - The City retained $19,569 to pay for administrative costs pursuant to a cooperative agreement between the former RDA and the City dated April 18, 2011. However, the cooperation agreement between the City and the former RDA is not an enforceable obligation since 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 $19,569 was not paid pursuant to an enforceable obligation. The OFA balance available for distribution will be increased by $19,569.

- The Agency recorded a $34,692 closing entry to account for an unrealized gain on investment. The Agency provided documentation supporting that the amount is in fact an adjustment and not a transfer. Therefore, no adjustment to the OFA balance available is necessary.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- Fund balances requested to be retained in the amount of $2,020,053 to cover future obligations was partially denied in our March 26, 2013 OFA determination letter. Based on additional conversations with Agency staff, we believe the retention of these funds is necessary to ensure adequate funding for enforceable obligations. Specifically:
  - Finance determined $710,500 is required to cover enforceable obligations for the fiscal year 2012-13 that were listed on an approved ROPS and for which funding was provided.
  - It is our understanding the Agency's largest project area reached its tax increment cap in April 2011. As a result, the Agency's available tax increment was significantly reduced and will not be sufficient to cover all the Agency's obligations. Therefore, Finance's is authorizing the retention of the remaining $1,309,553 to ensure adequate funding for the Stipulated Judgment with the San Mateo Union High School District, the last remaining obligation from the expired project area.

The Agency's OFA balance available for distribution to the affected taxing entities is $2,177,803 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	809,293
Finance Adjustments		
Add:		
Disallowed transfers:	$	1,368,510
Total OFA available to be distributed:	$	2,177,803

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 Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Lin-Lin Cheng, Finance Director, City of Foster City
Mr. Bob Adler, Auditor-Controller, County of San Mateo
Ms. Shirley Tourel, Auditor, County of San Mateo
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office