



September 13, 2013

Ms. Kelly McAdoo, Assistant City Manager
City of Hayward
777 B Street
Hayward, CA 94541

Dear Ms. McAdoo:

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 August 8, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Hayward Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on May 24, 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 was 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 August 8, 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 27, 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:

- Transfers to the City of Hayward (City) in the amount of \$4,752,000. The former Redevelopment Agency (RDA) made several cash transfers to the City during the fiscal year ended June 30, 2011. However, 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 created 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. As discussed further in the following sections, transfers totaling \$4,752,000 are disallowed because they are all agreements or arrangements between the city that created the RDA and the former RDA. In addition, these city and RDA agreements or arrangements do not meet the exceptions outlined in HSC section 34171 (d) (2).

- Repayment of advances to the City in the amount of \$2,220,000. The former RDA entered into a Repayment Agreement with the City in 1975 for advances received for the Hayward Development Project. The Repayment Agreement has been amended and restated numerous times. The Agency contends this is not a loan; however, neither loans nor agreements between the city and former RDA are considered enforceable obligations, unless the agreement was at the time of the issuance of indebtedness or within two years of the creation of the former RDA pursuant to HSC section 34171 (d) (2). The agreement is not related to the issuance of indebtedness and the former RDA was established in 1969. The Agency made two \$800,000 installment payments in January and July 2011 pursuant to the Amended and Restated Repayment Agreement entered into on July 1, 2008. Additionally, a partial payment of \$620,000 for the prior year's installment payment was transferred to the City pursuant to former RDA Board Resolution RA 11-07 (Resolution RA 11-07) in March 2011. Because these payments are not considered enforceable obligations, the OFA available balance has been increased by \$2,220,000.
- Repayment of City loans totaling \$1,917,000 as identified in the General Ledger for the Redevelopment Operating Fund provided by the Agency. Resolution RA 11-07 directed the former RDA to make several cash transfers to the City on March 2, 2011, to repay loans funded by the City's Water Enterprise Fund, Water Replacement Fund, and Sewer Enterprise Fund. HSC section 34171 (d) (2) states that enforceable obligations do not include any agreements between the city, county, or city and county that created the RDA, unless the loan agreement was entered into within the first two years of creation. The former RDA was established in 1969 and according to Resolution RA 11-07, the loans from the Water Funds were made in or about 1990 and the loan from the Sewer Fund was made in or about 2003. Therefore, the total transfer of \$1,917,000 for four payments (\$624,629 + \$416,446 + \$44,048 + \$831,877) is not allowed, and the OFA balance available has been increased by \$1,917,000.
- Transfer of \$450,000 from the former RDA Fund to the City's Street System Improvement Fund. Former RDA Board Resolution RA 11-14, dated June 28, 2011, authorized the transfer to cover the local match requirement for the City's grant award from the California Department of Transportation. While the City received the grant in 2010, the former RDA did not commit its funds to the project until June 28, 2011. HSC section 34163 (b) prohibits agencies from entering into any agreements after June 27, 2011. Furthermore, the grant documentation provided was for a grant awarded to the City, not the former RDA, and the contracts that were entered into by the City with third parties were all dated after June 27, 2011. Arrangements between the City that created the RDA and the former RDA are not enforceable obligations. Therefore, the OFA balance available has been increased by \$450,000.
- Transfers to the City's General Fund in the amount of \$165,000. The former RDA's general ledger lists a "supplemental to general fund" monthly expense in the amount of \$13,750. This reoccurring expense was incurred on the last day of each month during 2011 totaling \$165,000 (\$13,750 x 12). During the Meet and Confer process, the Agency stated that these transfers included \$55,000 for the Downtown Business Improvement Association and \$90,000 for public art projects. The Agency provided City contracts with third parties, most of which

were entered into after June 27, 2011, and actions taken by the City Council approving the annual budget for the Business Improvement Area Fund. However, the Agency did not provide any supporting documentation showing that the former RDA had committed the use of the funds to third parties prior to June 27, 2011. Arrangements between the city that created the RDA and the former RDA are not enforceable obligations. Therefore, the OFA balance available has been increased by \$165,000.

The repayment of 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 Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- The Agency requested to restrict a combined balance of \$7,338,068 for the ROPS periods of July through December 2012 (ROPS II) and January through July 2013 (ROPS III). Finance initially determined that the OFA balance available should be increased by \$4,326,136. Based on additional review during the Meet and Confer process, the Agency should retain \$4,467,493 (\$3,184,476 + \$143,019 + \$1,139,998) for enforceable obligations. Accordingly, the OFA balance available will be increased by \$2,870,575 (\$7,338,068 - \$4,467,493) as further discussed below.

- The Agency received \$2,868,913 from the Redevelopment Property Tax Trust Fund (RPTTF) for the ROPS II period in June 2012. Additionally, for the ROPS II period, the Agency reported \$315,563 that was approved to be expended from RPTTF funding as being expended from Reserves on the Prior Period Estimates vs. Actuals tab with the July through December 2013 (ROPS 13-14A) form. Therefore, the Agency may retain \$3,184,476 (\$2,868,913 + \$315,563) for the ROPS II period.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

- For the ROPS III period, Finance approved and the Agency received \$4,216,021 from the RPTTF in January 2013. Since the Agency received the full amount approved for the ROPS III period and the ROPS III distribution is not included in the June 30, 2012 balance, the Agency is not permitted to retain additional balances for the ROPS III period. However, the Agency requested and Finance did not deny \$143,019 in reserve balances for the ROPS III period. Therefore, the Agency may retain \$143,019 for the ROPS III period.
- For the ROPS 13-14A period, Finance approved and the Agency received \$2,308,884, which consists of \$843,673 from the RPTTF and \$1,465,211 from the ROPS II prior period adjustment. Since the Agency received the full amount approved for the ROPS 13-14A period and the ROPS 13-14A distribution is not

included in the June 30, 2012 balance, the Agency is not permitted to retain additional balances for the ROPS 13-14A period. However, the Agency requested and Finance did not deny \$1,139,998 in reserve balances for the ROPS 13-14A period. Therefore, the Agency may retain \$1,139,998 for the ROPS 13-14A period.

The Agency's OFA balance available for distribution to the affected taxing entities is \$5,856,617 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (1,765,958)
Finance Adjustments	
Disallowed transfers	\$ 4,752,000
Disallowed balances retained for fiscal year 2012-13 obligations	2,870,575
Total OFA available to be distributed:	\$ 5,856,617

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. Tracy Vesely, Finance Director, City of Hayward
Ms. Carol Orth, Tax Analysis Division Chief, County Auditor-Controller, County of Alameda
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office