DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 17, 2013

Ms. Sarah Schlenk, Agency Administrative Manager
Oakland Redevelopment Successor Agency
250 Frank H. Ogawa Plaza, #3315
Oakland, CA 94619

Dear Ms. Schlenk:

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 April 25, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Oakland Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on February 5, 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 April 25, 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 May 3, 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 transfers to the City of Oakland (City) in the amount of $128,820,367. Our initial review noted that the former Redevelopment Agency (RDA) transferred cash totaling $139,844,716 to the City of which $128,820,367 ($35,161,938 + $93,658,429) was not permitted. Of the $128,820,367 in disallowed transfers, $53,541,545 ($15,877,394 + $37,664,151) was determined to be restricted cash/bond proceeds not available for disbursement to the taxing entities and the OFA balance available was increased by $75,278,822 ($128,820,367 - $53,541,545). Based upon further review during the Meet and Confer process, disallowed transfers total $95,584,052 ($35,161,938 + $60,422,114), of which $59,121,915 ($15,877,394 + $43,244,521) is restricted cash/bond proceeds and OFA balances available will be increased by $36,462,137 ($95,584,052 - $59,121,915), as further discussed below.

    - Pursuant to a Purchase and Sale Agreement with a Leaseback Option (Purchase and Sale Agreement) between the City and the former RDA dated March 3, 2011, the former RDA transferred $35,161,938 to the City to acquire nine properties with a leaseback option by the City. 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. Therefore, the transfer of $35,161,938 from the former RDA to the City was not for a valid obligation and the cash and property transfers should be reversed. Of the $35,161,938 in transfers, $15,877,394 had originated from restricted cash/bond proceeds and is not available for disbursement to the taxing entities. Therefore, the OFA balance available for distribution is being increased by $19,284,544 ($35,161,938 - $15,877,394).

- Pursuant to a Funding Agreement between the City and the former RDA executed on March 3, 2011, the Agency transferred $104,682,778 to the City. The former RDA agreed to pay the City an amount equal to the cost for the City to carry out and complete projects on behalf of the former RDA. Pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the city, county, or city and county that created a RDA and the former RDA for which an enforceable obligation does not exist is not permitted.

  During the initial review, it was determined that $11,024,349 of the transfers had third party contracts executed by the City after the effective date of the Funding Agreement and before June 27, 2011. The remaining balance of $93,658,429 ($104,682,778 - $11,024,349) was not related to enforceable obligations. It was determined that contracts issued prior to the Funding Agreement date of March 3, 2011, cannot be obligations of the former RDA as the former RDA's funds were not committed at the time of contract execution. Additionally, HSC 34163 (b) prohibits contracts to be entered into after June 27, 2011. Since $37,664,151 of the disallowed amount originated from restricted cash/bond proceeds and is not available for disbursement to the taxing entities, the OFA balance available was increased by $55,994,278 ($93,658,429 - $37,664,151).

  Based upon further review during the Meet and Confer process, $35,987,547 is restricted for the Oakland Army Base (Base) and $8,273,117 may be retained for certain third party contracts, as further discussed below. Therefore, $60,422,114 ($104,682,778 - $35,987,547 - $8,273,117) is not restricted or related to enforceable obligations. Since $43,244,521 of the disallowed amount originated from restricted cash/bond proceeds and is not available for disbursement to the taxing entities, the OFA balance available will be increased by $17,177,593 ($60,422,114 - $43,244,521).

  - During the Meet and Confer process, the Agency contended that approximately $34.7 million of the original disallowed amount is restricted balances for the Oakland Army Base Reuse project and cannot be remitted to the taxing entities. In the Meet and Confer request, the Agency stated that the amount consisted of approximately $22 million in revenues generated on the Army Base, $7 million restricted for specific purposes, and $5.7 million restricted for remediation financial assurance.

    The Economic Development Conveyance (EDC) Memorandum of Agreement (Agreement) between the U.S. Army, Oakland Base Reuse Authority (OBRA), and the former RDA states that any remaining EDC Property Proceeds that were not reinvested during the reinvestment period in accordance with the

Agreement shall become due and payable to the U.S. Army. The Agency provided the annual financial statements for the Base showing that $23,279,960 was derived from the revenues generated by the Property. Therefore, the Agency may retain $23,279,960 as restricted balances to be reinvested in the Base or remitted to the U.S. Army.

Additionally, the Agency noted that the Base financial statements included a $7 million transfer from the former RDA. The Agency contends that while the amount was not "earned" from the Base, the amount is restricted as it was provided to fund the Joint Infrastructure Development Fund required by the Oakland Army Base City/Port Cost Sharing Agreement dated June 1, 2011. However, 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. Therefore, this agreement is not an enforceable obligation. However, the $7,019,000 consists of $4,019,000 for the Tidelands Trust and the $3 million for public park and public access purposes. These amounts were provided by the Port of Oakland (Port), a component unit of the City, for the transfer of the Knight Yard Property from the former RDA to the Port. These proceeds constitute EDC Property Proceeds as defined by the EDC Agreement. Therefore, the Agency may retain $7,019,000 as restricted balances to be used consistent with the EDC Agreement or remitted to the U.S. Army.

The $5,688,587 for remediation financial assurance is a requirement under the Consent Agreement between the former RDA, OBRA, and the California Department of Toxic Substances Control. Section 4.18 of the Consent Agreement specifies how the amount is to be determined. The Agency provided additional documents supporting the amount calculated. Therefore, the Agency may retain $5,688,587 as restricted balances for the remediation financial assurance requirement.

Therefore, a total of $35,987,547 ($23,279,960 + $7,019,000 + $5,688,587) is restricted for the Base.

- During the Meet and Confer process, the Agency contended that the $11,024,349 of transfers with third party contracts should be increased to $27,770,776. Based upon further review during the Meet and Confer process, the items identified below are enforceable obligations of the former RDA since the contracts were entered into by the former RDA prior to June 27, 2011. For the remaining items, HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, which includes 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 resolutions of the former RDA providing funding to the City are considered arrangements between the city that created the RDA and the former RDA, and are not enforceable obligations. Furthermore, the City entered into contracts with third parties, not the former RDA, and the contracts do not identify the

funding source as coming from the former RDA. Therefore, $8,273,117 may be retained.

- Item 7 – Coliseum Transit Village, Local Match for Prop 1C for $3,073,261
- Item 9 – Façade Improvement Grant Agreement for $50,000
- Item 46 – Façade Improvement Grant Agreement for $15,000
- Item 53 – Appraisal for Site – Donna Desmond Associates for $10,000
- Item 55 – Business Improvement District Assessments on former RDA properties for $53,415
- Item 62 – 16th Street Train Station Predevelopment Loan for $36,342
- Item 103 – Coliseum Transit Village, Local Match for Prop 1C for $4,905,100
- Item 105 – Plans for BART Plaza Improvements for $130,000

- Capital asset transfers to the City pursuant to a Purchase and Sale Agreement executed between the former RDA and City on March 3, 2011. The former RDA agreed to the sale of 103 RDA properties to the City for a purchase price of $1 each. Per HSC section 34191.3, the requirements in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 shall be suspended, except as those provisions apply to the transfers for governmental use, until Finance has approved a long-range property management plan (LRPMP). 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 LRPMP pursuant to HSC section 34191.5. Since these are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities.

- During the Meet and Confer process, Finance also identified $49,290,265 in notes and loans receivables transferred to the City pursuant to a Loan Assignment and Assumption Agreement executed between the former RDA and the City on March 3, 2011. The former RDA agreed to the sale and assignment of $49,290,265 in notes and loans receivables to the City for a total purchase price of $1. 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. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted and the Agency should reverse the transfer. Since these are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities. Furthermore, any payments received by the City should be transferred back to the Agency. The Agency should request the use these proceeds and any payments that are anticipated to come in from the notes and loans receivables as "Other" funds on the ROPS prior to requesting funds from the Redevelopment Property Tax Trust Fund.

- Balances needed to satisfy fiscal year 2012-13 Recognized Obligation Payment Schedule (ROPS) obligations will be increased by $3,984,653. The Agency requested to retain $40,954,764 to satisfy ROPS obligations, which was the available asset balance remaining as reported in the DDR. Since the adjustments noted above increased the available asset balance, the Agency is permitted to retain $44,939,417 to satisfy approved ROPS obligations. Therefore, OFA balances available will be decreased by $3,984,653 ($44,939,417 - $40,954,764).

The Agency's OFA balance available for distribution to the affected taxing entities is $32,477,484 (see table below):

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed transfers ($19,284,544 + $17,177,593)	$	36,462,137
Balances retained for fiscal year 2012-13 obligations	$	(3,984,653)
Total OFA available to be distributed:	$	32,477,484

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Patrick Lane, Redevelopment Program Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office