



October 16, 2013

Mr. Paul Abelson, Finance Director  
City of Oakley  
3231 Main Street  
Oakley, CA 94561

Dear Mr. Abelson:

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 September 10, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Oakley Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on June 26, 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 September 10, 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 October 1, 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:

- The transfer of a commercial property identified as APN 037-132-038 to the City of Oakley (City) on May 8, 2012 is not allowed. The Agency claims the City granted the property to the Agency in 2005 for development. The Agency further claims that this is a small piece of property that is essentially unusable due to an easement and because the RDA did not pay for the property, the Oversight Board does not have responsibility for its disposition. 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. The Agency did not provide any documentation of an enforceable obligation that required the transfer. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

Finance notes, however, that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) 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.

We would like to remind the Agency that pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. For DDR purposes, however, the value of the property will not be considered when determining the amount available for distribution to the affected taxing entities. The Agency should reverse the improper transfer, recover the asset from the City, and include the property in the Long Range Property Management Plan to be submitted to Finance pursuant to HSC section 34191.5.

- Finance previously noted that the Agency transferred land to the East Contra Costa Fire Protection District (District) and recommended the Agency consider memorializing the transfer through the oversight board resolution process. The Agency claims this property was transferred pursuant to an enforceable obligation and should not be required to go through an oversight board action to be transferred. Our review indicates that the Agency entered into an agreement in June 2010 with the District, Contra Costa County, the City, and the former Oakley Redevelopment Agency to construct a new turn-key fire station. Section 8 of the agreement requires the transfer of the property to the District upon completion of the project. The Agency provided the Notice of Completion, as required by Section 7 of the agreement, to transfer the property to the District. Therefore, we have determined that the property was transferred in 2011 pursuant to an enforceable obligation and does not require oversight board approval.
- The request to retain \$451,290 (\$322,163 + \$129,127) in OFA balances that are legally restricted for the funding of enforceable obligations or balances needed to satisfy Recognized Obligation Payment Schedule (ROPS) obligations for the 2012-13 fiscal year. Our review indicates the Agency will be permitted to retain \$137,762 (\$131,565 + \$3,915 + \$2,282). Accordingly, the OFA balance available for distribution is increased by \$313,528, the unsupported amount.

We note that for the July through December 2012 ROPS period (ROPS II), the Agency was approved for \$1,507,745 in Redevelopment Property Tax Trust Fund (RPTTF) for approved enforceable obligations. However, the County Auditor Controller (CAC) only distributed \$1,165,392. Under Procedure 6, the Agency was already permitted to retain \$1,382,745 for ROPS II debt service payments. This amount is comprised of the entire ROPS II distribution of \$1,165,392 and \$207,353 in Other Funds.

Due to the shortage of RPTTF, the Agency also used Other Funds to satisfy approved enforceable obligations not funded by RPTTF. The total of Other Funds used to satisfy approved enforceable obligations is \$131,565. Therefore, the Agency will be permitted to retain this amount.

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.

In addition, the CAC made a prior period adjustment totaling \$3,915 in accordance with HSC section 34186 (a). This adjustment assumes these funds are included in the June 30, 2012 balance and are available for use on the January through June 2013 (ROPS III) approved enforceable obligations. The Agency will be permitted to retain these funds.

Finally, the Agency was approved to spend \$250,000 in Other Funds for administrative costs during ROPS III. Based on the Agency's reconciliation of ROPS III included in the Agency's January through June 2014 ROPS (ROPS 13-14B), the Agency only expended \$2,282 of the approved amount. The Agency will be permitted to retain these funds.

- The Agency adjusted the final amount to be remitted to the taxing entities by \$861,008 for various items on the Agency's ROPS for the period July through December 2012. These items were denied by Finance in our letter dated May 24, 2012 because they were obligations of the City, and not the former RDA. Finance continues to deny these items as enforceable obligations. Therefore, the request to retain balances to fund those items is not allowed.

Finally, Finance notes that the City, and not the Agency, executed the Fifth Amendment to the Lease Agreement with James D'Amico and Delta Black Bear Diner. Although the City may have been acting as the Agency, this leased property should be included in the Long Range Property Management Plan to be submitted to Finance pursuant to HSC section 34191.5.

The Agency's OFA balance available for distribution to the affected taxing entities is \$952,264 (see table below):

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (222,272)
Finance Adjustments	
Add:	
Requested retained balances not supported	313,528
Disallowed Agency adjustment	861,008
<b>Total OFA available to be distributed:</b>	<b>\$ 952,264</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 section 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 Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



Justyn Howard  
Assistant Program Budget Manager

cc: Mr. Bryan Montgomery, Executive Director, City of Oakley  
Mr. Bob Campbell, Auditor-Controller, Contra Costa County  
Mr. Steve Mar, Bureau Chief, Local Government Audit Bureau, California State  
Controller's Office  
California State Controller's Office