DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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

May 17, 2013

Ms. Tiffany Bohee, Executive Director
City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Bohee:

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 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City and County of San Francisco Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 14, 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 April 1, 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 24, 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:

- In our initial review, Finance was unable to determine if the assets legally restricted for uses specified by debt covenants in the amount of $197,878,974 is accurate. Based on further review during the Meet and Confer process, additional information and documents were provided showing that $167,350,056 is being maintained in accounts with third party trustees. The DDR only restricted $167,314,078 as being maintained in separate accounts. Therefore, Finance is reversing $167,314,078 of its adjustment and increasing the legally restricted funds by an additional $35,978 ($167,350,056 - $167,314,078).

  The remaining $30,564,896 ($197,878,974 - $167,314,078) in legally restricted assets was not held by a third party trustee. It is our understanding that in some instances, the Agency elected not to utilize a third party bond trustee to account for its bond proceeds, but instead tracks the funds with its own accounting system. The Agency employed outside auditors to perform an Agreed Upon Procedures (AUP) review of the Low and Moderate Income Housing Fund (LMIHF) restricted balances. Results from the LMIHF AUP, although not definitive, should translate to whether the accounting records can be relied upon for the OFA DDR. For the OFA DDR, Finance as well as Macias Gini & O'Connell LLP are relying on the stated accounting records, but not auditing them.

Subsequently, on March 29, 2013, the Agency submitted to Finance an audit report from Macias, Gini, and O'Connell substantiating the LMIHF restricted balances with a revised LMIHF DDR of the same date that relies upon those audited restricted balances. Finance has completed its review of the LMIHF AUP, which included obtaining clarification and requesting additional documents for various items. Based on the submitted LMIHF AUP, Finance is reversing $30,564,896 of its adjustment.

- OFA balances requested in the amount of $6,308,262 for legally restricted assets and $9,735,959 in current unencumbered balances to fund enforceable obligations. During the Meet and Confer process, the Agency stated the amount to be restricted in Procedure 8 should be decreased by $3,855,197 (from $6,308,262 to $2,453,065) and the amount to be restricted in Procedure 9 should be increased by $2,860,072 (from $9,735,959 to $12,596,031).

  For Procedure 8, the Agency stated that $2,453,065, rather than the original $6,308,262 requested, is needed to be retained to cover two obligations in the Yerba Buena Center Project Area because the project area expired in January 2011. Since no funds are being distributed out of the Redevelopment Property Tax Trust Fund for this project area, the Agency needs to retain OFA balances generated from the project area to pay two remaining obligations approved by Finance on the July through December 2013 Recognized Obligation Payment Schedule (ROPS). Therefore, the Agency may retain $2,453,065 and the OFA balance available will be increased by $3,855,197 ($6,308,262 - $2,453,065).

  Based on additional information provided, Finance agrees that the amount to be restricted in Procedure 9 for fiscal year 2012-13 obligations should be increased by $2,860,072 (from $9,735,959 to $12,596,031) for approved items on the July through December 2012 and January through June 2013 ROPS. Therefore, the OFA balance available will be decreased by $2,860,072.

The Agency's OFA balance available for distribution to the affected taxing entities is $959,147 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Adjustment to legally restricted assets	$	(35,978)
Requested retained balance not supported		3,855,197
Balances to satisfy fiscal year 2012-13 obligations		(2,860,072)
Total OFA available to be distributed:	$	959,147

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: Ms. Sally Oerth, Deputy Director, City and County of San Francisco
Mr. James Whitaker, Property Manager, San Francisco County
Mr. Benjamin Rosenfield, Controller, San Francisco County
California State Controller's Office