DEPARTMENT OF FINANCE

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May 29, 2013

Ms. Jenny Haruyama, Administrative Services Director
City of Tracy
333 Civic Center Plaza
Tracy, CA 95316

Dear Ms. Haruyama:

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 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Tracy Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on February 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 22, 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 21, 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:

- Assets transferred to the City of Tracy (City) from January 2011 to June 2012 in the amount of $4,462,995. We identified cash totaling $6,306,309 that was transferred to the City. However, cash in the amount of $1,843,395 was subsequently returned to the Agency. Assets that have not been returned to the Agency equal to $4,462,995 and still remain in the City's possession. The amount consists of $2,126,315 in bond proceeds and $2,336,680 in cash. The Agency contends the transfers were made pursuant to a Public Improvement Grant and Cooperation Agreement dated January 17, 2011 between the City and the former Redevelopment Agency (RDA).

  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, and indebtedness obligations as defined in subdivision (e) 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 transfers made in per the Public Improvement Grant and Cooperation Agreement were not made pursuant to an enforceable obligation and are not permitted. As such, $4,462,995 should be returned to the Agency. The Agency's restricted assets will be increased by $2,126,315 for the bond proceeds and the OFA balances available for remittance will be increased by $2,336,680.

As related to the bond proceeds, Finance notes that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued.

- Balances requested to be retained in the amount of $1,766,087 for fiscal year 2012-13 obligations were partially denied. On the Recognized Obligation Payment Schedule for the July through December 2012 ROPS (ROPS II) period, Finance approved $1,766,087 and the County Auditor Controller (CAC) distributed $1,143,471 on June 1, 2012. On the July through December 2013 ROPS form, the Agency reported total expenditures of $1,766,087. Therefore, the Agency may retain $1,766,087 for the ROPS II period; this amount includes the $125,000 previously denied by Finance.

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:

- Balances legally restricted in the amount of $251 should be adjusted to $0. The Agency's requested to retain $251 in current unencumbered OFA balances to cover future obligations is not allowed. The Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations. It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

  Should a deficit occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

  Since the Agency has not met the requirements detailed in HSC section 34179.5 (c) (5) (D) and possesses alternatives to address short term cash flow shortages, Finance deems it is not necessary for the Agency to retain $251 in OFA unencumbered balances.

The Agency's OFA balance available for distribution to the affected taxing entities is $4,618,398 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	2,281,467
Finance Adjustments		
Add:		
Disallowed transfers to the City:	$	2,336,680
Request to retain legally restricted balance not supported:		251
Total OFA available to be distributed:	$	4,618,398

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: Mr. Robert Harmon, Senior Accountant, City of Tracy
Ms. Sandra Chan, Chief Deputy Auditor-Controller, County of San Joaquin
California State Controller's Office