DEPARTMENT OF FINANCE

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

REVISED

July 16, 2013

Mr. Ron Garratt, Interim City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Garratt:

Subject: Housing Assets Transfer Form

This letter supersedes the California Department of Finance's (Finance) Housing Asset Transfer Form letter dated August 30, 2012. Pursuant to Health and Safety Code (HSC) section 34176 (a) (2), the City of Santa Clara as Housing Successor Agency (Agency) submitted a Housing Assets Transfer Form (Form) to Finance on July 31, 2012, for the period February 1, 2012 through July 31, 2012. Finance issued its determination related to those transferred assets on August 30, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more items that was objected to by Finance. The Meet and Confer session was held on February 20, 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.

- Exhibit A, Item 5 – Land at 2525 El Camino Real (ROEM Project). Finance continues to object to the transfer. Finance originally objected to the transfer because the acquisition portion of the project is not an enforceable obligation. The Acquisition Loan Agreement for this property is dated July 12, 2011. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. Finance maintains this position as the Predevelopment Loan Agreement dated April 19, 2011, did not require the former RDA to enter into the Acquisition Loan Agreement. Additionally, the agreements were between the Housing Authority and a third party, not the former RDA. Therefore, since the former RDA was not a party to the agreements and had no authority to enter into the Acquisition Loan Agreement to acquire the property, the item is not a housing asset pursuant to HSC section 34176 (e) (1).

  However, Finance notes that to the extent the Agency would like to continue with the development of Item 5 for affordable housing purposes, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA 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.

- Exhibit A, Item 6 – Land at 90 N. Winchester Boulevard (BAREC Project). Finance no longer objects to the transfer. Finance originally objected to the transfer because the agreement was amended after June 27, 2012. HSC section 34163 (c) prohibits amending or modifying existing agreements. The Agency contends the item is a housing asset because the property was acquired pursuant to a Purchase and Sale Agreement entered into in 2005. The Agency provided the Purchase and Sale Agreement, which states the property is to be used for affordable housing. Therefore, the item is a housing asset pursuant to HSC section 34176 (e) (1).

- Exhibit A, Items 7 and 8 and Exhibit F, Items 1 and 2 – Master Leases, Subleases, and Rents. Finance determined the items should be removed from the Form. Finance originally objected to the transfers because these items are dependent upon master leases between the City of Santa Clara and the former RDA. HSC section 34171 (d) (2) deemed any agreements between the city, county, or city and county that created the RDA and the former RDA to be void. The sublease agreements between the former RDA and third parties are now inoperative because they are dependent on the master leases, which are now void. Additionally, the properties are owned by the City, not the former RDA. Therefore, the items are not housing assets of the former RDA and should not be included on the Form. Additionally, since the sublease agreements are inoperative, the associated rents reported on Exhibit F, Items 1 and 2 should also be removed from the Form.

- Exhibit C, Item 1 – $1.1 million amount associated with the Bill Wilson Center. Finance no longer objects to the transfer. Finance originally objected to the transfer because based upon conversations with the Agency, it is our understanding that this obligation has been paid in full. The Agency contends the item is a housing asset because the loan proceeds related to 2010 Amended Affordable Housing Loan Agreement have not been fully disbursed. The Agency provided accounting records showing the various disbursements that have been made and that there was still an outstanding balance of $1.1 million as of February 1, 2012. Therefore, the item is a housing asset pursuant to HSC section 34176 (e) (2).

  However, the successor agency has not listed the agreement on the Recognized Obligation Payment Schedules (ROPS) for the January through June 2012 period, the July through December 2012 period, or the January through June 2013 period. The successor agency should list the payments that have been made during prior ROPS periods without Finance's approval as well as any additional payments that need to be made on a future ROPS for Finance's review.

- Exhibit C, Item 2 – $4.6 million amount associated with the Monroe/San Tomas site. Finance continues to object to the transfer. Finance originally objected to the transfer because based upon conversations with the Agency, we understand that no contracts have been entered into by June 27, 2011; therefore, this item is not an enforceable obligation. The Agency contends the item is a housing asset because the Purchase Agreement obligated the former RDA to develop the property as affordable housing

pursuant to HSC section 33334.16. However, obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. Therefore, the item is not a housing asset pursuant to HSC section 34176 (e) (2).

- Exhibit C, Item 3 – $8 million encumbrance for the BAREC Project. Finance continues to object to the transfer. Finance originally objected to the transfer because the Purchase and Sale Agreement was entered into on August 20, 2011. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the item is a housing asset because the Development Agreement states the property "shall be developed for up to 165 units of senior residences which shall be made affordable to low- and very low-income seniors." However, the Grant Deed states that "in the event [the Housing] Authority...does not comply with the land use requirements...or the Affordability Covenants...[the Housing] Authority shall pay the State the difference between the actual price paid...and the fair market value of the Property" or "if development...has not commenced within the timeframes...the Property shall revert to the State." Pursuant to the Grant Deed, the requirement to develop affordable housing is now the obligation of the Housing Authority, not the former RDA, and if the obligation is not met, the Housing Authority is to pay the difference between the actual price and the fair market value or return the property to the State. Therefore, the item is not a housing asset pursuant to HSC section 34176 (e) (2).

- Exhibit C, Item 5 – Finance continues to object to the transfer. Finance originally objected to the transfer because the First Time Homebuyer Financing Program is based upon contracts with the City and not the former RDA. Therefore, the $5.4 million line item is not an enforceable obligation and is not a housing asset. The Agency contends the item is a housing asset because the Operating Agreements for the First-Time Homebuyers Financing Program obligated the former RDA to "make available an annual allocation of funds to provide Agency Loans for Homebuyers under the terms and conditions set forth in [the] Agreement." However, the Operating Agreements do not have specific terms, such as term of the agreement or total amount to be committed. Furthermore, the third Recital of the Agreements states that "Further allocations to the Program may be made by the Agency at its own discretion." The former RDA no longer has this discretion. Therefore, the agreements are not enforceable obligations and the item is not a housing asset pursuant to HSC section 34176 (e) (2).

- Exhibit D, Items 252 through 265 – Finance determines that the items should be removed from the Form. Finance originally objected to the transfers because the First Time Homebuyer loans totaling $1.1 million were entered into after June 27, 2011, and are not enforceable obligations. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the items are housing assets because the loans were made in accordance with the Operating Agreements for the First-Time Homebuyers Financing Program. However, the Operating Agreements do not have specific terms, such as the term of the agreement or the total amount to be committed. In addition, the third Recital of the Agreements states that "Further allocations to the Program may be made by the Agency at its own

discretion." The former RDA no longer has the discretion; therefore, the agreements were not enforceable obligations and no loans could be made pursuant to them.

In addition, although not included in the initial review, it appeared Exhibit D, Items 100 through 251 should have been removed from the Form becuase the loan agreements all had execution dates after June 27, 2011. However, based on clarifying information and additional documents provided by the Agency, the maturity dates for the loan agreements were reported rather than the execution dates. The Agency provided the corrected execution dates for the loan agreements, which were all entered into prior to June 27, 2011. Therefore, the items are housing assets pursuant to HSC section 34176 (e) and eligible for transfer.

In addition, per Finance's Housing Asset Transfer Form letter dated August 30, 2012, Finance continues to object to the following items not disputed by the Agency:

- Exhibit C, Item 4 – The Habitat for Humanity $381,289 line item does not qualify as a transferable housing asset because the successor agency is not a party to the underlying agreement. Therefore, the item is not an enforceable obligation.

- Exhibit C, Item 6 – Based upon conversations with the City and a review of underlying agreements, the Housing Services line item is a grant receivables already included in Exhibit D and is a duplicate of the amounts indicated as being owed for the obligation. The balance of the amount was associated with anticipated administrative and monitoring costs for the successor housing entity associated with these grants. Administrative and monitoring costs are not housing encumbrance assets and are not eligible for transfer.

- Exhibit D, Item 35 – $7 million loan for 2525 El Camino Real. The loan does not qualify as a housing asset because the agreement supporting the purchase of the asset is not an enforceable obligation of the successor agency. The acquisition loan agreement portion of this project was entered into on July 12, 2011. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. As a result, only the $249,425 associated with the Predevelopment Loan Agreement dated April 19, 2011 is eligible for transfer.

- Exhibit D, Items 88 through 99 – Grants totaling $465,129 were entered into after June 27, 2011 and are not enforceable obligations. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011.

This is Finance's final determination related to the assets reported on your Form. Except for items disallowed as noted above, Finance is not objecting to the remaining items listed on your Form. Assets transferred deemed not to be a housing asset shall be returned to the successor agency.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor or Mary Halterman, Analyst at (916) 445-1546.

Sincerely,

Jennifer for

STEVE SZALAY
Local Government Consultant

cc: Mr. Gary Ameling, Director of Finance, Housing Agency, City of Santa Clara
Mr. Jeff Pederson, Housing and Community Services Division Manager, Housing Agency, City of Santa Clara
Ms. Tamara Haas, Assistant Finance Director, City of Santa Clara
Ms. Irene Lui, Division Manager, Santa Clara County
Ms. Jacelyn Ma, Property Tax Apportionment Manager, Santa Clara County
Ms. Manju Beher, Santa Clara County
California State Controller's Office