DEPARTMENT OF FINANCE

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

March 28, 2013

Ms. Dawn Merchant, Finance Director
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Dear Ms. Merchant:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Antioch Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (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. Pursuant to HSC section 34179.6 (d), Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Transfers totaling $1,871,458 are disallowed:
    - The agreement with the California Department of Boating and Waterways was denied as an enforceable obligation by Finance in our letter dated May 11, 2012 as an inclusion to the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2012. Therefore, transfers totaling $831,458 are disallowed.
    - Funds transferred for the Marley Creek Culvert Replacement project in the amount of $1 million. A review of the contracts indicates the agreements are between the City of Antioch (City) and various third parties. As the former redevelopment agency is neither a party to the contracts nor responsible for payment of these contracts, they are not enforceable obligations.
    - Payments made for the Monitoring Wells Project totaling $40,000. This project was denied by Finance in our letter dated May 11, 2012 as an inclusion to the ROPS for period from January through June 2012.

- The request to retain funds in the amount of $12,705 is disallowed. The cash flow analysis provided by the Agency does not demonstrate an immediate need to retain these unencumbered OFA balances, nor does it suggest available funding will be insufficient to service the Agency's bond debt.

  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), 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.

- Properties transferred to the City totaling $2,457,484. These properties were not transferred for governmental use pursuant to HSC 34181 (a), as communicated in our Objection to Oversight Board letter dated November 2, 2012. However, for DDR purposes, the value of the transfer will not be considered when determining the amount available for distribution to the affected taxing entities because properties are not cash or cash equivalent. The Agency should reverse the improper transfer of properties, recover the assets from the City, and include these properties in its Long Range Property Management Plan which is to be submitted to Finance pursuant to HSC section 34191.5.

If you disagree with Finance's adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's OFA balance available for distribution to the affected taxing entities is $2,114,063 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	229,900
Finance Adjustments		
Add:		
Disallowed transfers	$	1,871,458
Request to retain balances not supported		12,705
Total OFA available to be distributed:	$	2,114,063

Absent a Meet and Confer request, 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 section 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 Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Lynn Tracy Nerland, City Attorney
Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office