



April 1, 2013

Mr. Lee Squire, Financial Services Manager
City of Brea
1 Civic Center Circle
City of Brea, CA 92821

Dear Mr. Squire:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Brea 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 December 18, 2012. 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 \$9,967,446 are disallowed. The Agency transferred cash in the amount of \$1,008,911 to the City of Brea (City) for administrative costs; however, only \$597,732 was approved on a Recognized Obligation Payment Schedule (ROPS); therefore, the remaining amount, \$411,179, is not allowed.
- The Agency also transferred land valued at \$9,556,267 to the City, which was not supported by an enforceable obligation. However, because land is not considered cash or cash equivalent, the adjustment will not affect the balance available for distribution to the affected taxing entities. The Agency should reverse the improper transfer, recover the land from the City, and describe the planned disposition of the property in its long-range property management plan as required by HSC section 34191.5.
- We also note the Agency expended 2011 bonds proceeds in the amount of \$4,750,000. 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. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose for which they were issued or if they were issued after December 31, 2010. The bond proceeds expended in this case were issued on June 1, 2011. For DDR purposes, however, these disallowed

transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. However, these improper transfers should be reversed, and the Agency should recover the bond proceeds.

- The Agency's request to retain funds totaling \$9,947,175 to cover future obligations has been adjusted by \$3,945,629. The Agency has been approved for funding in the amount of \$6,001,546 through the ROPS for the period January 2012 through June 2013. The Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations in the future. 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), 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.

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 \$11,510,784 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 7,153,976
Finance Adjustments	
Add:	
Disallowed transfers	\$ 411,179
Requested retained balances not supported	3,945,629
Total OFA available to be distributed:	\$ 11,510,784

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 Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Bill Gallardo, Administrative Services Director
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office