DEPARTMENT OF FINANCE
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May 4, 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

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 of Brea Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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. 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 18, 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:

- Transfers totaling $9,967,446 were disallowed. The amount consists of $411,179 in cash and $9,556,267 in property. During the Meet and Confer process, additional information was provided and Finance is reversing $249,640 of the adjustment related to the cash transfer, as further discussed below.
    - The Agency transferred cash in the amount of $1,008,911 to the City of Brea (City) for administrative and capital improvement project costs. Of the $1,008,911 in transfers, only $597,372 was related to capital improvement project costs approved on the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 (ROPS I) period. The remaining $411,539 was related to administrative costs for ROPS I. However, administrative costs for the ROPS I period is capped at the greater of 5 percent of property tax allocated or $250,000. Finance approved $4,254,986 for the ROPS I period and 5 percent equals $212,749, which means the Agency could expend up to $250,000 for administrative costs. Therefore, $847,372 ($597,372 + $250,000) is allowed and the OFA balance available will be increased by $161,539 ($1,008,911 - $847,372).

- The Agency also transferred land valued at $9,556,267 to the City, which was not supported by an enforceable obligation. The Agency has submitted Oversight Board resolution 2013-02 to Finance related to the transfer of the property, which is currently under review. 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.

  These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

- We also note the Agency expended 2011 bonds proceeds in the amount of $4.75 million. The Agency had requested the use of bond proceeds for the ROPS I period and Finance did not deny the item. On the January through June 2013 ROPS (ROPS III) form, the Agency reported actual expenditures of $4.75 million of bond proceeds. Since Finance did not deny the item, the use of $4.75 million of bond proceeds was an allowable expenditure.

  For any remaining bond proceeds, 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 question were issued on June 1, 2011.

- The Agency's request to retain funds totaling $9,947,175 to cover enforceable obligations. Based on further review during the Meet and Confer process, the Agency may retain $9,854,611 ($9,763,052 + $91,559) for enforceable obligations and the OFA balance available will be increased by $92,564 ($9,947,175 - $9,854,611), as further discussed below:

  - For the ROPS I period, the Agency incurred $93,830 in expenditures that were not paid until the July through December 2012 ROPS (ROPS II) period. The Agency provided supporting documents showing that $91,559 was actually paid. Therefore, the Agency may retain $91,559 to cover the ROPS I expenditures that were paid during the ROPS II period and the OFA balance available will be increased by $2,271 ($93,830 - $91,559).

    Finance notes that amounts requested and approved in ROPS are effective only for the six-month period covered. To the extent the Agency does not expend funds approved and received on a ROPS until a subsequent period, the Agency should relist the unexpended amounts that need to be retained for those enforceable obligations on the subsequent ROPS with the funding source as "Reserves" or "Other" and an entry in the Notes section indicating the funds were received in a prior ROPS period.

  - For the ROPS II period, the County Auditor Controller (CAC) distributed $0 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through

December 2013 ROPS (ROPS 13-14A) form, the Agency reported actual expenditures of $9,395,110 under the RPTTF column, $356,456 under the Reserves column, and $118,589 under the Other funding column. Finance had approved all of the expenditures under the RPTTF and Reserve columns, but only approved $11,486 of the expenditures under the Other funding column. The remaining expenditures were above the Finance approved amounts. Therefore, the Agency may retain $9,763,052 ($9,395,110 + $356,456 + $11,486) from the OFA balances for approved ROPS II enforceable obligations.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

The Agency's OFA balance available for distribution to the affected taxing entities is $7,408,079 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	7,153,976
Finance Adjustments		
Add:		
Disallowed transfers	$	161,539
Requested retained balances not supported		92,564
Total OFA available to be distributed:	$	7,408,079

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