



April 8, 2013

Ms. Sherri Holman, Treasurer/Finance Director  
City of Fountain Valley  
10200 Slater Avenue  
Fountain Valley, CA 92708

Dear Ms. Holman:

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 March 8, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Fountain Valley Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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. Finance issued an OFA DDR determination letter on March 8, 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 March 25, 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:

- Asset transfers totaling \$6,528,260 were disallowed. Finance is reversing \$360,977 of this adjustment.

Finance previously determined that the Wells Site Agreement in the amount of \$872,747 was between the City of Fountain Valley (City) and EAR Engineering Construction and Support Services; the former redevelopment agency (RDA) was not a party to the contract. However, the Agency provided additional information and documents showing that the former RDA had committed funds to the project to reimburse the City for a portion of the expenditures incurred. The Agency also provided accounting records showing that the Agency's cost on the project should be \$360,977, not the \$872,747 reported. Therefore, the OFA balance available for distribution is being increased by \$511,770 (\$872,747 - \$360,977).

As related to the remaining amount of \$5,655,513, the Agency contends HSC section 33604 allows for the transfer available funds derived from the former RDA's inactive project area. HSC section 33604 states that "if an agency ceases to function, any surplus funds existing after payment of all its obligations and indebtedness shall vest in the community." While the former RDA has ceased to function, its obligations and indebtedness have not been paid off. Additionally, HSC section 34188 details how

property tax revenues and other moneys, which would include unencumbered balances, will be distributed to the affected taxing entities. Therefore, the OFA balance available for distribution is being increased by \$5,655,513.

In addition, Finance continues to make the following adjustments not disputed by the Agency during the Meet and Confer process:

- The request to retain assets totaling \$9,192,600 is denied. The former RDA transferred marketable securities to the City, in the amount of \$6,017,600. Per HSC section 34179.5 (b) (1), "cash and cash equivalents includes, but is not limited to, cash in hand, bank deposits, Local Agency Investment Fund deposits...marketable securities, commercial paper ...and any other money owned by the successor agency."

The advance between the former RDA and the Housing Successor Agency in the amount of \$3,175,000 is also denied. Pursuant to HSC section 34167.10 (a), the definition of a city, county, or city and county includes, but is not limited to, any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report, any component unit of the city, county, or city and county, and any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financial responsible or accountable.

The Agency's OFA balance available for distribution to the affected taxing entities is \$34,978,692 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 19,618,809
Finance Adjustments	
Add:	
Disallowed transfers	\$ 6,167,283
Requested retained balance not supported	\$ 9,192,600
<b>Total OFA available to be distributed:</b>	<b>\$ 34,978,692</b>

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. Jim Simon, Consultant, RSG  
Mr. Frank Davies, Property Tax Manager, Orange County  
California State Controller's Office