DEPARTMENT OF FINANCE

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

April 1, 2013

Mr. Jim DellaLonga, Senior Project Manager/Administrative Officer
Economic Development Department
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840

Dear Mr. DellaLonga:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Garden Grove 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 3, 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:

- Property transfers totaling $10,825,031 are disallowed. The Agency transferred land for Site C DDA valued at $10,825,031 to the City of Garden Grove (City), which was denied as an inclusion to the Recognized Obligation Payment Schedule for the period January through June 2013. Per the Meet and Confer letter dated December 18, 2012, Finance continues to deny this item.

  We also noted the Agency transferred housing assets in the amount of $39,037,769. Based on the information provided in the Housing Asset Transfer form in August 2012, the total value of housing assets to be transferred to the housing successor was $23,830,289; therefore, the remaining transfer amount, $15,207,480, is disallowed.

  Because these transfers are not cash or cash equivalents, the disallowance will not affect the amount available for distribution to the affected taxing entities. However, the Agency should reverse the transactions, recover the assets from the City and Housing Successor, and describe the planned disposition of each property in its long-range property management plan as required by HSC section 34191.5.

- The request to restrict assets that are not cash or cash equivalents has been adjusted by $85,619. A review of the Westbrook Commercial Rehab Agreement indicates the contract is payable on demand; therefore, we have adjusted the amount available by $68,974. Additionally, the Marquez Agreement, in the amount of $16,645, is disallowed. According to the information provided by the Agency, this is not a receivable, but rather a note payable.

- The Agency's request to retain $15,342,863 in current unencumbered OFA balances to cover future obligations has been adjusted by $8,240,277. The Agency was approved for a total of $7,099,204 in Other funding during the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2013, and received $3,382 in June 2012 for the ROPS period July through December 2012. Therefore, the request to retain the remaining amount, $8,240,277 is disallowed.

  The Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. 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), 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 $8,325,896 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per Oversight Board:	$	-
Finance Adjustments		
Add:		
Requested restricted balance not supported	$	85,619
Requested retained balance not supported	$	8,240,277
Total OFA available to be distributed:	$	8,325,896

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. Matthew Fertal, City Manager, City of Garden Grove
Mr. Kingsley Okereke, Director of Finance, City of Garden Grove
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office