DEPARTMENT OF FINANCE

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March 19, 2013

Ms. Donna Mullally, Manager of Fiscal Services
City of Irvine
1 Civic Center Plaza
Irvine, CA 92623

Dear Ms. Mullally:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Irvine 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 11, 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:

- The transfer in the amount of $626,200 is disallowed. The Agency transferred funds to the Irvine Community Land Trust; all unencumbered balances in the Low and Moderate Income Housing Fund should have been remitted to the county auditor controller for distribution to the affected taxing entities. Additionally, the request for funding this item was denied as an inclusion to the Recognized Obligation Payment Schedule (ROPS) for the period January 2013 through June 2013.

- The request to restrict $694,918 is disallowed. The Agency's request to restrict funds in the amount of $626,200 for the Irvine Community Land Trust agreement is again denied, and the request to restrict the remaining $68,718 is denied; the Agency has not provided sufficient documentation to restrict cash balances. Examples of cash eligible for restriction include unspent bond proceeds, grant proceeded and program income restricted by third parties, and other assets considered to be legally restricted as evidenced by a legal document.

- The Agency's request to retain $2,345,079 in current unencumbered OFA balances to cover future enforceable obligations 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. The thorough analysis required by HSC section 34179.5 (c) (5) (D) was not 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 $3,666,197 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed transfers	$	626,200
Requested retained balance not supported		3,039,997
Total OFA available to be distributed:	$	3,666,197

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. Mark Asturias, Manager of Housing, City of Irvine
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office