



March 25, 2013

Ms. Charity Hernandez, Redevelopment Manager
City of Ontario
303 East B Street
Ontario, CA 91746

Dear Ms. Hernandez:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Ontario 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 13, 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 \$51,109,298 are not allowed for the following items:
 - Payment for the 2002 Housing Set Aside Loan in the amount of \$168,719. This payment was approved for Low and Moderate Income Housing Fund funding on the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2012. Therefore, the payment using other funds is not allowed.
 - Reimbursement made to the City of Ontario (City) for the Fire Station No. 5 project in the amount of \$385,829. Per HSC section 34171 (d) (2), agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency (RDA) and the former RDA are not considered enforceable obligations.
 - Loan repayments to the City for the Oaks Middle School project totaling \$8,954,167. HSC section 34176 (e) (6) (B) prohibits agencies from repaying city loans prior to fiscal year 2013-14.
 - Payments for Educational Revenue Augmentation Fund loans totaling \$4,019,922. The Agency requested no funding to meet these obligations on the ROPS for the period January through June 2012.

- Payments to the City for 2001 Subordinate Tax Allocation Bond payments totaling \$17,968,688. HSC section 34177.5 (a) (2) prohibits agencies from accelerating debt service payments.
- Reimbursement to the City for the 2001 Lease Revenue Bond payments in the amount of \$19,611,973. HSC section 34177.5 (a) (2) prohibits agencies from accelerating debt service payments.
- The request to restrict funds totaling \$3,469,971 is not allowed for the following items:
 - The 2002 Housing Set Aside Loan in the amount of \$1,055,408. Based on our review of the loan agreement, the Agency has the authority to release funds from the reserve account at any time.
 - The Ontario Airport Tower project escrow account in the amount of \$2,414,563. Based on our review of the Owner's Participation Agreement, the former RDA was not required to maintain an escrow account for the project.
- The request to retain funds for assets that are not cash or cash equivalents in the amount of \$1.6 million is not allowed. The former RDA advanced the City \$1.6 million for the purchase of the Saris-Regis Group properties. Based on a review of the supporting documents, it is our understanding that the balance should have become due, or is payable on demand by the Agency. As such, the request to restrict the balance as a non-cash equivalent is not allowed, and the amount has been included in the amount available for distribution to the affected taxing entities.
- The request to retain funds totaling \$2,083,298 is not allowed. 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), 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.

- Properties valued at \$18,437,315 were transferred to the City of Ontario. Based on our review of the Cooperate Agreement between the City and the Agency, it does not

appear that these assets were transferred for governmental use, nor was the transaction approved by the oversight board or Finance.

- Because these properties are not considered cash or cash-equivalent assets, the value of the properties has not been included in the amount available for distribution to the affected taxing entities. However, the Agency should reverse the transfer of properties and recover these assets from the City. Pursuant to HSC section 34191.5, within six months after receiving a Finding of Completion from the Finance, the Agency is required to submit for approval to the Oversight Board and Finance a Long-Range Property Management Plan (LRPMP) that addresses the disposition and use of the real properties of the former redevelopment agency (RDA). The Agency should include these properties in the inventory of all former RDA properties and describe the planned disposition of each asset in its LRPMP.

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 \$53,850,793 (see table below).

Available Balance per DDR:	\$ (4,411,774)
Finance Adjustments	
Add:	
Disallowed transfers	\$ 51,109,298
Requested restricted balances not supported	3,469,971
Adjustment for non cash or cash equivalents	1,600,000
Requested retained balances not supported	2,083,298
Total OFA available to be distributed:	\$ 53,850,793

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 Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. John Andrews, Economic Development Director, City of Ontario
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office