DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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May 4, 2013

Mr. Jeff Kirkpatrick, Community Services
Orange County
1770 North Broadway
Santa Ana, CA 92706

Dear Mr. Kirkpatrick:

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 Orange County Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 20, 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 17, 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:

- The Agency's request to retain $16,917,233 for the funding of enforceable obligations has been reduced by $4,760,065 ($16,917,233 - $8,066,948 - $4,090,220).

  On the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) period, Finance approved $13,985,333 and the County Auditor Controller disbursed $4,086,206 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS form (ROPS 13-14A), the Agency reported actual expenditures for the ROPS II period of $8,066,948; all expenditures reported for ROPS II were paid from RPTTF funding regardless of the original funding source identified on the ROPS. Therefore, the Agency may retain $8,066,948 for the ROPS II period.

  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.

Additionally, the County Auditor Controller made a prior period adjustment to the January through June 2013 ROPS (ROPS III) distribution in the amount of $4,090,220 pursuant to HSC section 34186 (a). Therefore, the Agency may retain $4,090,220 in order to adequately fund enforceable obligations approved for the ROPS III period.

Should deficits 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), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected pursuant to HSC section 34177 (d) (1) (A), 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.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- The transfer in the amount of $2,300,623 to Saddleback Vineyards 100, LLC is not allowed. A review of the supporting documents indicates the agreement was between the County of Orange and Saddleback Vineyards, not the former redevelopment agency. Additionally, the earliest signature date of the contract is July 28, 2011, and pursuant to HSC section 34163 (b), an agency shall not have the authority to enter into agreements as of June 28, 2011.

  During the Meet and Confer process, the Agency stated that the Orange County Board of Supervisors is scheduled to approve the transfer of funds back to the Successor Agency on May 14, 2013. Therefore, these funds will not be available for remittance within five business days of the date of this letter.

The Agency's OFA balance available for distribution to the affected taxing entities is $78,065,003 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	71,004,315
Finance Adjustments		
Add:		
Disallowed transfers	$	2,300,623
Requested retained balances not supported		4,760,065
Total OFA available to be distributed:	$	78,065,003

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. Steve Franks, Director, Orange County Community Resources
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office