



DEPARTMENT OF
FINANCE

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REVISED

July 3, 2013

Ms. Lisa L. Kim, Senior Project Manager
City of Orange
230 East Chapman Avenue
Orange, CA 92866

Dear Ms. Kim:

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 City of Orange (Agency) submitted an oversight board approved OFA DDR to the California Department of Finance (Finance) on January 10, 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 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 22, 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:

- Transfers to the City of Orange (City) totaling \$1,497,975 (\$767,837 + \$730,138) are partially not allowed. The Agency transferred the amount to the City for the West Chapman Avenue agreement. The former Redevelopment Agency (RDA) and City entered into an agreement in July 2010. However, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA, and indebtedness obligations as defined in subdivision (e) of Section 34171. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. Therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted. The OFA balance available for distribution will be increased by \$767,837. The remaining transfer of \$730,138 is bond proceeds. For DDR purposes, this disallowed transfer will not affect the amount available for distribution to the affected

taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued.

- The request to retain legally restricted assets in the amount of \$11,492,897 is allowed. The Agency provided adequate documentation that this amount represents bond funds held with the fiscal agent as well as bond cash already drawn down. Therefore, no adjustment to the OFA balance available for distribution is required.
- Restricted assets that are not cash or cash equivalent in the amount of \$3,051,823. The City is due to repay a loan to the Agency in the amount of \$3,051,823 in accordance to a promissory note (Note) dated April 2, 2008 for Grijalva Park Gymnasium/Sports Center Project. Per Section 2 of the Note, the entire principal balance, along with accrued but unpaid interest, shall be due and payable in full upon the earlier of the City's receipt of fees from the third party or 15 years after the date of the promissory note. This is not a short term receivable that is due to be paid within the next year. As such, Finance is reversing its decision and allowing the asset to remain as non-cash or cash equivalent as reported on the DDR. In the future, once the note is paid, the Agency should use these funds in lieu of requesting Redevelopment Property Tax Trust Fund (RPTTF) for enforceable obligations listed on the Agency's ROPS.
- The request to retain balances to fund enforceable obligations for the period January 2012 through June 2012 in the amount of \$8,011,543 is approved. Our review indicates the Agency received its RPTTF distribution in June 2012; therefore this amount was included in the June 30, 2012 OFA balance. These funds were intended for use on approved obligations for the July through December 2012 period (ROPS II); therefore, the Agency will be permitted to retain these funds for approved obligations. Our review also indicates the County Auditor Controller (Controller) made a prior period adjustment pursuant to HSC section 34186 (a) for the January through June 2013 (ROPS III) distribution. The Agency will be permitted to retain these funds as well. We note, although these two amounts combined are greater than the amount requested, the Agency is only permitted to retain those amounts requested in the DDR. No adjustment to the OFA balance is needed.

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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$17,854,243 (see table on following page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 17,086,406
Finance Adjustments	
Add:	
Disallowed transfers	\$ 767,837
Total OFA available to be distributed:	\$ 17,854,243

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.

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Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. John Sibley, Executive Director, City of Orange
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office