DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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March 27, 2013

Mr. Andrew White, Finance Manager
City of Poway
P.O. Box 789
Poway, CA 92074

Dear Mr. White:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Poway 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 15, 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:

- Assets transferred to the City of Poway (City) during the period of January 1, 2011 through June 30, 2012 totaling $10,220,238 are not allowable. HSC section 34179.5 (c) (2) only allows asset transfers within this period that are required by an enforceable obligation or meet the definition of governmental use. Specifically:

    - Assets transferred in the amount of $2,846,518. On March, 2011, the former redevelopment agency (RDA) transferred all of its assets to the City. Included in the transfer was $2,846,518 of cash and investments relating to the 1995 Smith Judgment. These assets were not transferred for an enforceable obligation and were not transferred back to the Agency. Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by $2,846,518. Since these funds are considered restricted, an offsetting adjustment will be made by a like amount.

    - Assets transferred in the amount of $7,373,720. Assets transferred from the former RDA to the City were used to reimburse advances from the City. The Agency was unable to provide sufficient documentation to demonstrate that the payments were for enforceable obligations. Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by $7,373,720.

- Balances requested to be retained fiscal year 2012-13 obligations totaling $20,502,760 should be adjusted by $11,959,670. This amount represents January through June 2013 Recognized Obligation Payment Schedule (ROPS III) expenditures that were approved with Redevelopment Property Tax Trust Fund (RPTTF) funding. Since the County Auditor Controller distributed RPTTF for approved ROPS III obligations on January 2, 2013, after the June 30, 2012 OFA balances delineated in the DDR, it is inappropriate for the Agency to retain current OFA balances for obligations that have already been funded through a separate process. Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by $11,959,670.

- Finance noted the county auditor controller adjusted the ROPS III January 2, 2013 distribution by $7,608,262 pursuant to HSC section 34186 (a). Therefore, Finance is allowing the retention of these funds in order to adequately fund approved ROPS III expenditures.

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 $18,684,369 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	6,959,241
Finance Adjustments		
Add:		
Disallowed transfers:		10,220,238
Adjustment to legally restricted assets:		(2,846,518)
Requested retained balance not supported:		11,959,670
HSC section 34186 (a) adjustment:		(7,608,262)
Total OFA available to be distributed:	$	18,684,369

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 Wendy Griffe, Supervisor or Derk Symons, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Ashley Jones, Senior Management Analyst, City of Poway
Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego County
California State Controller's Office