



May 2, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 27, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Poway Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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. Finance issued an OFA DDR determination letter on March 27, 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 15, 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:

- Assets transferred to the City of Poway (City) during the period of January 1, 2011 through June 30, 2012 totaling \$10,220,238. 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 of Poway (City). Included in the transfer was \$2,846,518 of cash and investments relating to the 1995 Smith Judgment (Judgment). The Agency claims the Judgment was entered jointly against the City and the Agency. The Agency also claims that because the Judgment was entered jointly, the City is equally responsible for ensuring compliance with the Judgment. Per documentation provided by the Agency, the City is not a party to the Judgment and is not responsible for ensuring compliance with the Judgment. However, these are restricted funds and should not be remitted to the County Auditor Controller for distribution to the affected taxing entities. Therefore, the funds should be transferred back to the Agency and used for their intended purposes through the Recognized Obligation Payment Schedule process. The OFA balances available for distribution will be

increased by this amount to show the improper transfer and the same amount will be credited as the funds are restricted. The net OFA balance available for distribution will be \$0.

- o Assets transferred in the amount of \$7,373,720. During 2011, the Agency transferred assets from the former RDA to the City to reimburse advances from the City. The Agency claims the transfers were reversed the following fiscal year. Our review indicates that during 2012, the City did, in fact, reverse the transfers and the funds were returned to the Agency; therefore, no adjustment to the OFA balance available for distribution is required.

The repayment of these loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

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:

- 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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$11,310,649 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 6,959,241
Finance Adjustments	
Add:	
Disallowed transfers:	2,846,518
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:	\$ 11,310,649

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 Danielle Brandon, 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