DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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May 8, 2013

Ms. Cindy Russell, Finance Officer
City of San Juan Capistrano
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

Dear Ms. Russell:

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 San Juan Capistrano (Agency) submitted an oversight board approved OFA DDR to the California Department of Finance (Finance) on January 11, 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 24, 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 totaling $800,000 are not allowed. Our review indicated the following:
    - The Agency transferred a total of $750,000 to the City of San Juan Capistrano (City) for a bond anticipation agreement dated January 20, 1988 and amended July 1, 1990. The documentation provided by the Agency shows this item is a loan from the City to the Agency with no third party fiscal agent. The documentation provided states this was an investment for the City to provide yield to the City and cash flow to the Agency. This is a loan between the City and the Agency and is not an enforceable obligation as detailed below.
    - The Agency transferred $50,000 to the City for payment on a land acquisition loan dated October 1, 1998. Per the DDR, this loan was to be paid upon the sale of the property or ten years. This is a loan between the City and the Agency and is not an enforceable obligation as explained below.
    - Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency 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. 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 transfer was not made pursuant to an enforceable obligation and is not permitted.

- In addition, all items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (i). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

- The request to retain balances in the amount of $4,059,831 is allowed. The Agency claims these funds are needed to satisfy ROPS for the July through December 2012 (ROPS II) and January through June 2013 (ROPS III) periods. More specifically, the Agency requested the following:

  - The Agency requested $2,104,232 for actual ROPS II expenditures. Our review indicates the Agency was approved for $2,827,159 in Redevelopment Property Tax Trust Fund (RPTTF) distributions. We note, the Agency did not receive any RPTTF for the ROPS II period; therefore, the Agency will be permitted to retain the actual amount expended up to the amount approved, $2,104,232.

  - The Agency requested to retain $1,248,000 for obligations approved for reserve funding during the ROPS III period. Our review indicates the Agency requested and was approved for $1,248,000 in reserves for the ROPS III period; therefore, the Agency will be permitted to retain these funds.

  - The Agency requested to retain $729,166 for ROPS III approved expenditures. Our review indicates the Agency was approved for $2,726,994 and was distributed $1,997,829 in RPTTF; therefore, the Agency will be permitted to retain these funds.

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.

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 $1,158,518 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	358,518
Finance Adjustments		
Add:		
Disallowed transfers	$	800,000
Total OFA available to be distributed:	$	1,158,518

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. Michelle Bannigan, Assistant Finance Director, City of San Juan Capistrano
Ms. Christy Jakl, Deputy City Clerk, City of San Juan Capistrano
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office