DEPARTMENT OF FINANCE
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EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 5, 2013

Mr. Jerry Craig, Program Manager
City of Tustin
300 Centennial Way
Tustin, CA 92780

Dear Mr. Craig:

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 Tustin Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 14, 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:

- Restricted assets that are not cash or cash equivalent in the amount of $21,896,889 (this includes a fair market value decrease of $19,607 to reflect balances reported on the Comprehensive Annual Financial Report for the year ending June 30, 2012) is disallowed. The City of Tustin (City) issued a Promissory Note (Note) to the former Redevelopment Agency (RDA) in December 2008. Per the Note, the principal and interest payment is due and payable to the RDA in the maturity amount of $22,894,122 in December 2013; therefore, this asset is considered a current short-term receivable. As such, the available balance for distribution is increased by $21,896,889.

  Finance acknowledges that the receivable is currently illiquid and does not intend to accelerate the maturity date or payment of the Note. Finance is waiving the requirement to remit those funds within five working days of receipt of this notice as required per HSC section 34179.6 (f). However, Finance expects full payment of the Note and funds received to be remitted to the County Auditor Controller (CAC) for distribution to the affected taxing entities. Additionally, Finance will not seek penalties granted to it under HSC section 34179.6 (h) (1) for this amount until 5 days after the maturity date. If for some reason the Agency is unable to remit the entire sum on the due date, HSC section 34179.6 (h) (3) authorizes Finance to review requests for an installment payment plan. If the Agency wishes to make installment payments, please notify your Agency's assigned Finance review staff immediately. Upon receipt of your request, Finance will work with your Agency to determine whether installment payments are appropriate.

- The Agency requested to retain \$10,544,597 to cover fiscal year 2012-13 obligations. Based on further review during the Meet and Confer process, the Agency may retain \$10,124,325 (\$512,985 + \$9,611,340) to fund approved enforceable obligations, as further discussed below. Accordingly, the OFA balance available will be increased by \$420,272 (\$10,544,597 - \$10,124,325).

    - On the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 (ROPS I) period, the Agency incurred \$516,918 in expenditures that were not paid until after June 30, 2012. However, Item 55 on Form A in the amount of \$3,933 was included on the approved ROPS for \$0. Therefore, the Agency may retain \$512,985 (\$516,918 - \$3,933) for ROPS I obligations.

      Finance notes that amounts requested and approved in a ROPS are effective only for the six-month period covered. To the extent the Agency does not expend funds approved and received on a ROPS until a subsequent period, the Agency should relist the unexpended amounts that need to be retained for those enforceable obligations on the subsequent ROPS with the funding source as "Reserves" or "Other" and an entry in the Notes section indicating the funds were received in a prior ROPS period.

    - For the July through December 2012 ROPS (ROPS II) period, Finance approved \$10,029,640 and the CAC distributed \$6,122,195 from the Redevelopment Property Tax Trust Fund (RPTTF). For the July through December 2013 (ROPS 13-14A) period, the Agency reported actual expenditures during the ROPS II period of \$7,793,137 for approved enforceable obligations and \$292,125 for administrative costs. The CAC determined that the RPTTF covered \$6,122,195 of the enforceable obligations and \$0 of the administrative costs. This resulted in \$1,670,942 (\$7,793,137 - \$6,122,195) in expenditures from the OFA balances to cover the shortfall for enforceable obligations.

      For the administrative costs, Finance approved \$267,837 for the January through June 2013 (ROPS III) period, which means \$130,361 (3 percent x (ROPS II \$9,737,515 + ROPS III \$3,535,753) - \$267,837) could be paid during the ROPS II period. Since the CAC reported \$0 was paid from the RPTTF, then \$130,361 could be paid from the OFA balances. Additionally, on the ROPS II form, the Agency had requested \$1,687,842 for bond debt service payments that were due in January 2013. The amount was not denied by Finance and the Agency did not relist the amounts on the ROPS III form. Therefore, the Agency may retain \$9,611,340 (\$6,122,195 + \$1,670,942 + \$130,361 + \$1,687,842) 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.

- For ROPS III, Finance approved and the CAC distributed $3,803,590 from the RPTTF. The CAC did not make any adjustments for the ROPS I period on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process.

  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), 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:

- Our review indicates the total amount of assets held as of June 30, 2012 should be $79,733,240. When Finance reviewed the assets from the Low and Moderate Income Housing Fund (LMIHF) DDR, cash assets as of June 30, 2012 were listed at $7,858,315. However, when cash was transferred to the Successor Agency's cash account, the amount had increased to $7,890,860. As such, the total amount of assets held by the Agency as of June 30, 2012 has been increased by $32,545.

The Agency's OFA balance available for distribution to the affected taxing entities is $28,295,637 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	5,965,538
Finance Adjustments		
Add:		
Adjustment to the June 30, 2012 balance		32,545
Adjustment to restricted balance unallowed		21,877,282
Balances retained for enforceable obligations not supported		420,272
Total OFA available to be distributed:	$	28,295,637

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. Sean Tran, Administrative Services Manager, City of Tustin
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office