DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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May 31, 2013

Mr. Jeff Zwack, Development Services Director
City of Upland Successor Agency
460 North Euclid Avenue
Upland, CA 91786

Dear Mr. Zwack:

Subject: Other Funds and Accounts Due Diligence Review

The City of Upland 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 March 18, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). However, 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:

- The amount of assets held as of June 30, 2012 has been adjusted by $647,275. The cash and asset balances reported in the Agency's Comprehensive Annual Financial Report for the period ending June 30, 2012 is $647,275 higher than the amount reported in the Agency's DDR.

- Transfers of cash totaling $1,006,106 are not allowed. The Agency transferred funds in the amount of $716,000, $290,106, and $15,000 to the City of Upland for obligations not approved by Finance. The Agency has not provided sufficient documentation to support the transfer of funds to the City.

- The request to restrict assets in the amount of $162,465 is not allowed. The Promissory Note agreement between the former redevelopment agency (RDA) and Sherry Kinison, dated September 24, 1998, was extended 110 months by Amendment No. 5, dated December 23, 2002. The Promissory Note should have been paid in full by December 31, 2007.

- The Agency's request to retain $6,694,241 in current unencumbered OFA balances to cover current and future Recognized Obligation Payment Schedule (ROPS) items has been adjusted by $759,331. Finance approved the request to retain funds for the True-Up

payment, pass-through payments, and the ROPS distribution for the period July through December 2012.

However, the Agency has not adequately proven there will be insufficient property tax revenues to pay for ROPS obligations for the period January through June 2013. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations. It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

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.

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 $5,231,028 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	2,640,851
Finance Adjustments		
Add:		
Adjustment to June 30, 2012 balance	$	647,275
Disallowed transfers	$	1,021,106
Requested restricted balance not supported	$	162,465
Requested retained balance not supported		759,331
Total OFA available to be distributed:	$	5,231,028

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 Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Liz Chavez, Housing Manager, City of Upland
Ms. Linda Santillano, Property Tax Manager, County of San Bernardino
California State Controller's Office