DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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July 3, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated May 31, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Upland Successor Agency (Agency) submitted an oversight board approved OFA DDR to the 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 was not bound to complete its review and make a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). However, Finance completed its review of your DDR, which may have included obtaining clarification for various items. 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 June 17, 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:

- The amount of assets held as of June 30, 2012 was previously increased by $647,275 to $17,584,838. The Agency claims that neither the balance per the original OFA DDR nor Finance's review were correct. The Agency provided a revised beginning cash balance for the OFA DDR. Finance traced the revised balance to the Agency's Comprehensive Annual Financial Report for the period ending June 30, 2012. Therefore, Finance has determined the beginning OFA balance should have been $11,676,346. Accordingly, the OFA balance is adjusted by $5,261,217.

- As related to the transfers of cash totaling $1,021,106, Finance is partially allowing the transfers and adjusting the OFA balance, as provided below:

    - The transfer of $716,000 from the Agency to the City of Upland's (City) General Fund on January 18, 2011 is not allowed. The Agency claims this transfer was effective November 22, 2010 as a result of the City's mid-year budget adjustments and is outside the scope of the OFA DDR.

Our review indicates the City Council approved Resolution 6016 in November 22, 2010 to transfer $716,000 from the former Redevelopment Agency's (RDA) funds to the City's funds; however, the transfer did not occur until January 18, 2011. In addition, documents provided do not show that the former RDA resolved and authorized the transfer of the RDA's funds; nor do the documents show the transfer was made for legitimate RDA obligations. 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. Because the transfer was not made pursuant to an enforceable obligation, the transfer is not permitted. Accordingly, the OFA balance available for distribution will be increased by $716,000.

- The transfer of $290,106 is allowed. The Agency claims these rent revenues were accounted for in the Low and Moderate Income Housing Fund (LMIHF) until February 1, 2012 when the RDA was dissolved. The Agency also claims that rent revenues derived from low and moderate income housing were erroneously deposited into the LMIHF (as part of the then required 20 percent set-aside) after February 1, 2012 instead of the housing successor's fund. Documentation provided by the Agency shows that the Agency was due $315,000 in rents between February and June 2012 and that these rents were deposited into the LMIHF. Our review also indicates these properties were included on the Housing Asset Transfer form, transferred to the Housing successor and approved by Finance on August 29, 2012. Therefore, Finance has determined the rent revenues were transferred pursuant to an enforceable obligation and an adjustment to the available OFA balance is not needed.

- The transfer of $15,000 to the City. The Agency claims and Finance verified this transfer did not occur. Documentation previously reviewed indicated the Agency transferred $15,000 to the City for mid-year budget adjustments; however, accounting records for the adjustments confirmed the Agency did not transfer these funds; therefore, no adjustment to the available OFA balance is necessary.

- The request to restrict assets in the amount of $162,465 is not allowed. The Agency claims this is a long term receivable and the funds are not available until the borrower makes payment towards the loan. Our review indicates this is a loan receivable pursuant to a Promissory Note agreement between the former RDA and a third party dated September 24, 1998. Subsequently, Amendment No. 5 to the promissory note, dated December 23, 2002, extended the agreement term to 110 months to December 31, 2007. Based on documentation provided, the last payment received by the Agency was in February 2012; however, the Agency made no attempt to collect the funds until April 10, 2013.

  In addition, per the December 23, 2002 amendment, Section 7 of the original promissory, which remained the same as the original agreement, states in part that a failure to pay any

sum when due shall constitute a breach and entitles the Agency to declare all sums immediately due and payable. As such, this amount is due and payable and the OFA balance available for distribution will be increased by $162,465, the remaining balance of the loan.

If for some reason the Agency cannot immediately remit the entire sum, 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's request to retain $6,694,241 in current unencumbered OFA balances to cover current and future Recognized Obligation Payment Schedule (ROPS) items is partially denied, as further discussed below:

    - The Agency paid $1,768,063 for the True-up payment after June 30, 2012; however, this amount was not included in the DDR. Therefore, the Agency will be permitted to retain these funds.

    - The Agency made pass through payments for the January through June 2012 ROPS (ROPS I) after June 30, 2012 totaling $1,278,022. During ROPS I, successor agencies were authorized to make pass through payments; therefore, the Agency will be permitted to retain these funds.

    - The Agency did not receive all approved Redevelopment Property Tax Trust Funds (RPTTF) for the July through December 2012 ROPS (ROPS II) period. Therefore, the Agency will be permitted to retain the funds actually spent on enforceable obligations up to the Finance approved amount. As a result, the Agency will be permitted to retain $2,919,626. We note that although the Agency reported actual expenditures of $2,942,010, some of the items paid exceeded the Finance approved amount. 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.

    - The County Auditor Controller made a $324,567 prior period adjustment pursuant to HSC section 34186 (a) for the January through June 2013 ROPS (ROPS III) period. This adjustment assumes these funds are available for use on enforceable obligations; therefore, the Agency will be permitted to retain these funds to satisfy ROPS III approved obligations.

    - The Agency requested to retain $199,269 for expenses accrued during the ROPS I period but paid after June 30, 2012. The Agency provided documentation that traced the expenditures to Finance approved ROPS I line items. However, per the Agency, the amounts were included in the ROPS II reconciliation. Our review indicates the sum of ROPS I actual expenditures reported and the amounts accrued (and not spent until the ROPS II period) exceed Finance approved amounts for some of the ROPS items requested. For these reasons, the request to retain the amount is not permitted. The OFA balance available for distribution will be increased by $199,269.

      Finance notes that amounts requested and approved in a Recognized Obligation Payment Schedule (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.

- Retention of the remaining $204,694 is not allowed. Our review indicates the Agency received all other approved RPTTF to satisfy enforceable obligations for the 2012-13 fiscal year. Therefore, the OFA balance available for distribution will be increased by $204,694.

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 $0 (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	$	(5,261,217)
Disallowed transfers	$	716,000
Requested restricted balance not supported	$	162,465
Requested retained balance not supported		403,963
Total OFA available to be distributed:	$	(1,337,938)

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, Dispute Resolution Supervisor, or Danielle Brandon, 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