DEPARTMENT OF FINANCE
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May 5, 2013

Mr. David J. Christian, Finance Director
Successor Agency to the Yorba Linda Redevelopment Agency
4845 Casa Loma Avenue
Yorba Linda, CA 92886-3364

Dear Mr. Christian:

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 Successor Agency to the Yorba Linda Redevelopment 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 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:

- The transfer in the amount of $887,797 to the YESCO Sign Company for the Savi Ranch Project is not allowed. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency (RDA) or successor agency to any private party between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. Finance denied the project as an enforceable obligation on the Recognized Obligation Payment Schedules (ROPS) and again through the Meet Confer process in the letter dated December 18, 2012. Therefore, this transfer was not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by $887,797.

- The transfer of $6,035,572 to the City of Yorba Linda (City) is not allowed. The loan agreements dated June 19, 2001 and June 15, 2004, were between the City and the former RDA. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA 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, which includes contracts detailing specific work that were entered into by the former RDA 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. The OFA balance available for distribution will be increased by $6,035,572.

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 ROPS for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- The Agency requested to retain $6,369,153 for enforceable obligations. The Agency requested to retain the funds approved from the Redevelopment Property Tax Trust Fund (RPTTF) distribution on the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) and January through June 2013 (ROPS III) periods. Based on further review during the Meet and Confer process, the Agency may retain $6,180,297 ($4,947,793 + $1,232,504) for approved enforceable obligations and the OFA balance available will be increased by $188,856 ($6,369,153 - $6,180,297)

For the ROPS II period, Finance approved $5,136,649 in enforceable obligations and the County Auditor Controller (CAC) disbursed $0 from the RPTTF. On the July through December 2013 (ROPS 13-14A) form, the Agency reported expenditures totaling $4,858,343 for enforceable obligations and $546,617 in administrative costs. However, one line item with $8,177 in expenditures was listed for $0 on the approved ROPS form; therefore, the Agency may retain $4,850,166 ($4,858,343 - $8,177) for enforceable obligations. For the administrative costs, Finance approved and the Agency received $224,081 in the ROPS III period. The administrative costs are capped at 3 percent of property tax allocated for the fiscal year, which is $321,708 (3% x $4,886,649 (ROPS II) + $5,836,949 (ROPS III)). Since the Agency received $224,081 for administrative costs in the ROPS III period, the Agency could expend $97,627 ($321,708 - $224,081) during the ROPS II period. Therefore, the Agency may retain $4,947,793 ($4,850,166 + $97,627) 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.

In addition, the CAC made a prior period adjustment of $1,232,504 pursuant to HSC section 34186 (a) for the ROPS III period. Therefore, the Agency may retain $1,232,504 for the ROPS III period.

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 $6,712,354 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(399,871)
Finance Adjustments		
Add:		
Disallowed transfers	$	6,923,369
Retained balances not supported	$	188,856
Total OFA available to be distributed:	$	6,712,354

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. Pamela Stoker, Housing and Redevelopment Agency Manager, Successor Agency to the Yorba Linda Redevelopment Agency
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office