



May 2, 2013

Mr. Steve Lantsberger, Economic Development Director
City of Hesperia
9700 Seventh Ave
Hesperia, CA 92345

Dear Mr. Lantsberger:

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 Hesperia 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 23, 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 of Land and Other Real Property totaling \$39,398,328 to various entities. The Agency transferred properties and other assets to the City of Hesperia (\$3,802,057), the Hesperia Community Development Commission (\$16,844,481), the Hesperia Housing Authority (\$18,749,699), and the Hesperia Fire Protection District (\$2,091) during the period of March 2011 through June 2012.

These non-liquid assets are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

- The request to retain funds in the amount of \$10,987,112 to fund enforceable obligations was originally denied in part. Based on further review during the Meet and Confer process, the Agency may retain \$10,987,112 (\$2,487,828 + \$7,316,006 + \$1,183,278) for enforceable obligations, as further discussed below.

The Agency paid the pass through payments totaling \$2,487,828 that were due during the Recognized Obligation Payment Schedule (ROPS) for the period January through

June 2012 (ROPS I) in July 2012. Therefore, the Agency may retain \$2,487,828 for the pass through payments.

For the July through December 2012 ROPS period (ROPS II), Finance approved \$11,479,935 and the CAC distributed \$4,116,397 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency claims and Finance verified that only \$1,797,854 of the funding received from the RPTTF is included in the beginning balance; the remaining amount was included in the beginning balance for the Low and Moderate Income Housing Fund DDR. For the July through December 2013 period (ROPS 13-14A), the Agency reported actual expenditures during the ROPS II period of \$5,360,724 for approved enforceable obligations. This resulted in the Agency expending \$3,562,870 from OFA balances to cover the shortfall. Additionally, the Agency expended another \$1,955,282 in OFA balances on enforceable obligations approved by Finance listed with "Other" as the funding source. Therefore, the Agency may retain \$7,316,006 (\$5,360,724 + \$1,955,282) 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 the January through June 2013 ROPS period (ROPS III), Finance approved \$5,996,596 and the CAC distributed \$5,538,100 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). This resulted in a \$458,496 shortfall for the ROPS III period. Additionally, Finance approved \$1,009,000 to be expended from OFA balances. Therefore, the Agency may retain the remaining cash on hand totaling \$1,183,278 (\$10,987,112 - \$2,487,828 - \$7,316,006) to fund approved ROPS III enforceable obligations.

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's OFA balance available for distribution to the affected taxing entities has been revised to \$0, as reported on the DDR.

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: Ms. Anne M. Duke, Deputy Finance Director, City of Hesperia
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office