



May 29, 2013

Mr. Richard Warne, City Manager
Twentynine Palms Successor Agency
6136 Adobe Road
Twentynine Palms, CA 92277

Dear Mr. Warne:

Subject: Other Funds and Accounts Due Diligence Review

The City of Twentynine Palms 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 13, 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 request to restrict Project Phoenix costs in the amount of \$198,123 is not allowed. The Agency indicated these costs, incurred in the Fall of 2011, are for appraisal and engineering services associated with Project Phoenix. HSC section 34163 (b) prohibits a redevelopment agency (RDA) from entering into a contract with any entity after June 27, 2011. It is our understanding that there were no contracts in place prior to June 27, 2011 associated with Project Phoenix.
- The request to retain funds for Recognized Obligation Payment Schedule (ROPS) expenditures has been adjusted by \$235,046. The Agency has not adequately proven there will be insufficient property tax revenues in the January through June 2013 ROPS period to pay for these obligations. 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.

- The request to adjust the July 12, 2012 payment made to the San Bernardino County Auditor-Controller (CAC) in the amount of \$193,037 has been adjusted by \$1,700. The CAC originally demanded \$193,037, however, the CAC later issued a revised demand letter in the amount of \$191,337, after the Agency had remitted the required funds. Our review indicates the Agency received reimbursement for the overpayment in the amount of \$1,700 from the CAC.
- The transfer to the City in the amount of \$8,206,488 is not allowed. The transfer of bond proceeds to the City is void pursuant to HSC section 34177.3 (c) which prohibits the successor agency from transferring revenues or powers to any other public entity except pursuant to an enforceable obligation on an approved ROPS.

Pursuant to HSC section 34191.4 (c), successor agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose for which they were issued or if they were issued after December 31, 2010. The bond proceeds expended in this case were issued March 1, 2011. For DDR purposes, however, this disallowed transfer will not be considered in our determination of the amount available for distribution to the affected taxing entities.

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 \$434,869 (see table below).

Available Balance per DDR:	\$	-
Finance Adjustments		
Add:		
CAC July 12, 2012 payment adjustment	\$	1,700
Requested retained balance not supported		433,169
Total OFA available to be distributed:	\$	434,869

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, please 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: Mr. Ron Peck, Finance Director, City of Twentynine Palms
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office