



July 3, 2013

Mr. Joe Guzzetta, City Manager
Twentynine Palms Successor Agency
6136 Adobe Road
Twentynine Palms, CA 92277

Dear Mr. Guzzetta:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Twentynine Palms Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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). Finance issued an OFA DDR determination letter on May 29, 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 June 18, 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 request to retain \$654,940 for Recognized Obligation Payment Schedule (ROPS) expenditures is partially denied. Based upon further review during the Meet and Confer process, the Agency may retain \$603,451 (\$12,178 + \$576,216 + \$15,057) for approved ROPS expenditures. Accordingly, the OFA balance available will be increased by \$51,489 (\$654,940 - \$603,451), as further discussed below:

The amount includes \$12,178 in various accounts payables for the January through June 2012 ROPS (ROPS I) obligations that were paid after June 30, 2012. Therefore, the Agency may retain \$12,178 for ROPS I expenditures paid after June 30, 2012. Finance notes that amounts requested and approved in a 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.

For the July through December 2012 ROPS (ROPS II) period, Finance approved \$704,608 and the County Auditor Controller (CAC) distributed \$554,729 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 (ROPS 13-14A) form, the Agency reported \$461,216 in RPTTF expenditures and \$125,000 in administrative costs. However, since the Agency received \$135,000 for administrative costs for the January through December 2013 (ROPS III) period, the Agency may only retain \$115,000 for ROPS II administrative costs based on the \$250,000 administrative cost allowance limit per HSC section 34171 (b). Therefore, the Agency may retain \$576,216 (\$461,216 + \$115,000) for the ROPS II period.

For the ROPS III period, Finance approved \$786,273 and the CAC distributed \$771,216 from the RPTTF. The CAC adjusted the ROPS III January 2, 2013 distribution by \$15,057 pursuant to HSC section 34186 (a). Therefore, the Agency may retain \$15,057 in order to adequately fund approved ROPS III obligations.

The Agency did not object to the following adjustments made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustments are appropriate:

- 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 adjust the July 12, 2012 payment made to the 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 of Twentynine Palms (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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$251,312 (see table on next page).

Available Balance per DDR:	\$	-
Finance Adjustments		
Add:		
CAC July 12, 2012 payment adjustment	\$	1,700
Requested retained balance not supported		249,612
Total OFA available to be distributed:	\$	251,312

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.

Mr. Guzzetta
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Please direct inquiries to Evelyn Sues, Supervisor, or Mary Halterman, Analyst, at
(916) 445-1546.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Szalay', with a long, sweeping underline.

STEVE SZALAY
Local Government Consultant

cc: Mr. Ron Peck, Finance Director, City of Twentynine Palms
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office