



May 4, 2013

Ms. Sophie Escobar, Assistant Director of Economic Development
City of Victorville
14343 Civic Drive
Victorville, CA 92392

Dear Ms. Escobar:

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 March 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Victorville Successor 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 March 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 April 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:

- Finance previously disallowed \$1,390,966 in restricted assets and \$2,635,321 of capital assets related to the Desert Valley Hospital and Dr. Pepper Snapple Group projects. However, based on further review during the Meet and Confer, the only adjustment necessary is associated with the improper transfer of the former redevelopment agency's (RDA) capital assets to the City of Victorville (City) in the amount of \$2,365,321. The Agency contends the transfer was made pursuant to an Owner Participation Agreement (OPA) executed between the former RDA and the developer. However, the transfer of the property was not required in the OPA and does not meet criteria outlined in HSC section 34181 (a). Because properties are not considered cash or cash-equivalent assets, Finance has made no adjustment to the OFA balance available for distribution to the affected taxing entities. However, an offsetting adjustment in Procedure 2/3 and 7 is necessary to reflect the transfer of the assets.

These non-liquid assets transferred to the City 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.

Finance notes, however, that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, HSC section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

- The Agency's request to retain \$42,860,195 to cover future obligations is partially allowed. The Agency requested to retain these funds to meet its bond debt service obligations. Our review indicates the Agency's debt service payments are requested from "other funds". These "other funds" are provided by the Victor Valley Economic Development Agency (VVEDA) via a Joint Powers Authority agreement. The Agency claims the VVEDA will not receive sufficient Redevelopment Property Tax Trust Funds (RPTTF) to satisfy its payment to the Agency and the Agency is ultimately responsible for the bond debt service payment. However, further review indicates the VVEDA will receive sufficient RPTTF to meet its bond debt service payments to the Agency.

In addition, the Agency requested and was approved for \$613,220 in reserve funds for the July through December 2013 ROPS (ROPS 13-14A) period. Therefore, the Agency will be permitted to retain these funds. Therefore, the OFA balance available for distribution will be increased by \$42,246,975 (\$42,860,195 - \$613,220).

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 \$1,304,112 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (40,942,863)
Finance Adjustments	
Add:	
Adjustment for improper asset transfer	2,635,321
Adjustment for non-cash/cash equivalents	(2,635,321)
Requested retained balance not supported	42,246,975
Total OFA available to be distributed:	\$ 1,304,112

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: Mr. Keith Metzler, Assistant City Manager, City of Victorville
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office