



May 1, 2013

Mr. Rob Burns, Director of Finance
City of Chino
13220 Central Avenue
Chino, CA 91710

Dear Mr. Burns:

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 25, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Chino (Agency) submitted an oversight board approved OFA DDR to the 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 25, 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 12, 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:

- Request to retain legally restricted assets totaling \$7,153,928. Our review indicated the following:

Pass-through payments totaling \$1,966,683 is allowed. The Agency provided sufficient documentation that this amount was used to make required pass through payments to the taxing entities. This amount was not included on the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 period (ROPS I) due to the uncertainty of whether the payment should be made by the Agency or the County Auditor Controller. Therefore, there will be no adjustment to the OFA balance available for distribution.

For the Recognized Obligation Payment Schedule (ROPS) period of January through June 2012 (ROPS I), the Agency incurred \$5,187,245 in expenditures that were not paid until the July through December 2012 ROPS period (ROPS II). During the Meet and Confer process, Finance determined \$5,187,245 of the accruals were paid during the ROPS II period.

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.

- The Agency requested to retain amounts to cover enforceable obligations totaling \$16,650,056. Based upon further review during the Meet and Confer process, the Agency may retain \$11,343,623 ($5,581,272 + \$2,207,138 + \$3,390,000$) and the OFA balance available will be increased by \$5,306,433 ($\$16,650,056 - \$11,343,623$), as further discussed below.
 - For the ROPS II period, Finance approved and the County Auditor Controller (CAC) distributed \$5,746,484 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS form (ROPS 13-14A), the Agency reported expenditures totaling \$5,581,272 funded by the RPTTF. Therefore, sufficient RPTTF was received to cover the expenditures during the ROPS II period and the Agency may retain \$5,581,272 for the ROPS II period.
 - For the January through June 2013 ROPS period (ROPS III), Finance approved \$311,772 and the CAC distributed \$0 from the RPTTF. The CAC made an adjustment of \$7,535,830 for the ROPS I period on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). Additionally, Finance approved \$1,895,366 for enforceable obligations to be paid out of OFA balances. As such, the Agency may retain \$2,207,138 ($\$311,772 + \$1,895,366$) to cover approved enforceable obligations during the ROPS III period.
 - Of the \$3,824,271 requested to be retained, the Agency requested to retain \$3,390,000 for funds drawn down from bond proceeds to pay the City of Chino (City) for November and December 2011 obligations. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. 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, this is not an enforceable obligation. However, for DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are legally restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds. The OFA balance available for distribution will be increased by the remaining \$434,271.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010. The bond proceeds requested for use were issued in February 2011.

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

- Receivable balances totaling \$24,679. Based on information provided, these receivables are short-term in nature and therefore meet the definition of cash and cash equivalents as defined in HSC section 34179.5(b)(1).

The Agency's OFA balance available for distribution to the affected taxing entities is \$6,204,801 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 898,368
Finance Adjustments	
Add:	
Requested retained balances not allowed	\$ 5,306,433
Total OFA available to be distributed:	\$ 6,204,801

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.

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Please direct inquiries to Evelyn Sues, Supervisor or Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Nada Repajic, Management Analyst, City of Chino
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office