DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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REVISED

August 28, 2013

Mr. Orlando Acevedo, Economic Development Manager
Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307

Dear Mr. Acevedo:

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 19, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Town of Apple Valley 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 April 19, 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 May 20, 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 a payment made to Dokken Engineering for professional service in the amount of $54,259. Our initial review indicated the Agency received authority to spend Redevelopment Property Tax Trust Funds (RPTTF) for this obligation on the Recognized Obligations Payment Schedule (ROPS) for the January through June 2012 period (ROPS I); however, the Agency paid this obligation with bond proceeds. Our review indicates these are bond proceeds and cannot be distributed to the taxing entities. In addition, the Agency had bond debt service payments due during the ROPS I period that were not listed on the approved ROPS I but were paid using RPTTF; therefore, we no longer believe an adjustment is necessary.

  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.

- Finance previously determined the reserves required for 2005 and 2007 Tax Allocation Bonds should be $969,238. The amount on deposit with the trustee on June 30, 2012 was $1,059,747, exceeding the requirement by $90,502; therefore, the OFA balance available for distribution was increased accordingly. However, per Recital 4 of the 2005 bond indenture and recital number 5 of the 2007 bond indenture, the Agency authorized the issuance of bonds for the purpose of, among other things, making a deposit to the Reserve account. Additional review indicates the amount in excess of the required reserves is interest earned on those bond funds. Interest earned on bond funds is restricted and cannot be distributed to the taxing entities; therefore, we no longer believe this adjustment is necessary.

- The request to retain receivable balances for the Local Agency Investment Fund interest and accrued revenue totaling $910,400 is allowed. According to the Agency, these items represent short-term receivables and have since been collected by the Agency; However, during the meet and confer process, the Agency provided adequate documentation that these funds are needed to satisfy unfunded obligations for the July through December 2012 and January through June 2013 ROPS periods (ROPS II and ROPS III, respectively). Therefore, the Agency will be permitted to retain these funds to satisfy ROPS II and ROPS III obligations and no adjustment to the OFA balance will be made.

- Subsequent to the Meet and Confer process, the Agency provided additional information to Finance indicating that the beginning cash balance in both the OFA DDR and the Low and Moderate Income Housing Fund (LMIHF) DDR were incorrectly reported. The LMIHF DDR cash balance had been under reported by $4,647,107 and the OFA DDR cash balance had been over reported by $4,647,107.

  The $4,647,107 is attributable to the Redevelopment Agency (RDA) Project Area No. 2 (low/mod) fund as of June 30, 2012. During the LMIHF DDR Meet and Confer session, the Agency stated that upon dissolution of the former RDA, the Agency combined all redevelopment funds, thus creating one Redevelopment Obligation Retirement Fund (RORF). The Agency combined the LMIHF and all other funds to cover negative balances in other funds. However, HSC section 34163 (c) (5) prohibits an agency from transferring funds out of the LMIHF, except to meet the minimum housing-related obligations that existed as of January 1, 2011. Therefore, the Agency is prohibited from transferring $4,647,107 from the LMIHF to cover a deficit in other Agency funds.

  In Finance's LMIHF DDR determination letter dated March 4, 2013, and Finance's LMIHF DDR Meet and Confer determination letter dated May 7, 2013, Finance made an increase of $4,647,107 to the LMIHF beginning balance and the LMIHF balance available for distribution. However, a similar decrease to the OFA beginning balance and OFA balance available for distribution had not been made. Therefore, Finance is decreasing the OFA balance available for distribution by $4,647,107.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to zero (see table on following page).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	1,365,593
Finance Adjustments		
Adjustment to balance as of June 30, 2012	$	(4,647,107)
Total OFA available to be distributed:		0

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. Marc Puckett, Finance Director, Town of Apple Valley
Mr. Kofi Antobam, Assistant Finance Director, Town of Apple Valley
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office