



May 2, 2013

Mr. Scott McBride, Acting Community Development Director
City of Atwater
750 Bellevue Road
Atwater, CA 95301

Dear Mr. McBride:

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 Atwater Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 14, 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 15, 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:

- Assets in the amount of \$234,147. Finance's previous review of the accounting records provided by the Agency indicates the total amount of cash held as of June 30, 2012 should be \$232,997 instead of the negative \$1,150 reported on the DDR. As such, the amount was increased by \$234,147 ($\$232,997 + \$1,150$).

The Agency claims during Finance's initial review of its OFA DDR, the information provided to Finance did not reflect all transfer of funds from the former Redevelopment Agency's (RDA) funds to establish the new Agency funds. During the meet and confer, the Agency provided finalized information indicating the total cash held as of June 30, 2012 should be \$1,953. Therefore, the beginning OFA balance should be increased by \$3,103 ($\$1,150 + \$1,953$).

- Receivables in the amount of \$49,084. The Agency claims this amount represents the remaining portion of a subsidy to a developer totaling \$128,591. The Agency provided invoices accounting for the amounts repaid by the developer prior to dissolution; however, no formal contracts were entered into for the subsidy. HSC section 34179.5 (b) (1) states that "cash" and "cash equivalents" includes payables on demand. Since the Agency did not provide the loan agreement, repayment terms, or a contract, the

amount of the receivable becomes payable on demand and may not be retained in the non-cash or cash equivalents balance.

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:

- Capital assets in the amount of \$457,421. Our review of supporting documentation provided by the Agency noted the following four properties owned by the Agency that were not included in the DDR:
 - 1100 Atwater Blvd valued at \$293,424
 - Sycamore Ave valued at \$163,905
 - Parking Lot at Atwater Blvd & 4th Street valued at \$49
 - Parking Lot at Cedar Ave & 4th Street valued at \$43

Since property is not considered cash or cash-equivalent asset, adjustments made by Finance did not impact the available balance reported in the DDR. The Agency should include these properties in its Long Range Property Management Plan which is to be submitted to Finance pursuant to HSC section 34191.5.

The Agency's OFA balance available for distribution to the affected taxing entities is \$51,037 (see table below).

| | | |
|---|-----------|---------------|
| Available Balance per DDR: | \$ | (1,150) |
| Finance Adjustments | | |
| Adjustment to the June 30, 2012 cash balance | \$ | 3,103 |
| Retained non-cash balance not supported | | 49,084 |
| Total OFA available to be distributed: | \$ | 51,037 |

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

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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: Ms. Lori Waterman, Grants Manager, City of Atwater
Ms. Sylvia Sanchez, Supervising Accountant, County of Merced
California State Controller's Office