



June 5, 2013

Ms. Melissa G. Whitten, City Manager
City of Avenal
919 Skyline Boulevard
Avenal, CA 93204

Dear Ms. Whitten:

Subject: Other Funds and Accounts Due Diligence Review

The City of Avenal Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on March 21, 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). However, Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Transfers to the City of Avenal totaling \$6,355,796. The transfer was comprised of Avenal Theater and equipment in the amount of \$5,988,581 and \$367,215 of cash for the maintenance of the Theater. The Avenal Theater is not used for governmental purposes as defined in HSC section 34181. Per HSC section 34191.3, the requirements in subdivision (e) of Section 34177 and subdivision (a) of Section 34181 was suspended, except as those provisions apply to the transfers for governmental use, until the Finance has approved a long-range property management plan (LRPMP). Since the Theater and equipment are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities. However, the Agency should reverse the improper transfers, recover the assets, and include these properties in its Long Range Property Management Plan which is to be submitted to Finance pursuant to HSC section 34191.5.

The \$367,215 cash was transferred to the City for taking over the responsibility to operate, maintain, and preserve the historical nature and condition of the Avenal Theater. Since the transfer of the Theater is not permitted, the funds should be returned to the Agency. The Agency claims that cash transfer of \$367,215 was reversed for payment of Agency's debt service obligations. Our review indicates that the cash

transfer of \$367,215 is not included in the OFA balance. Therefore, the balance has been adjusted by \$367,215.

If you disagree with Finance's adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency's OFA balance available for distribution to the affected taxing entities is \$367,215 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Add Finance Adjustments	
Disallowed transfers:	\$ 367,215
Total OFA available to be distributed:	\$ 367,215

Absent a Meet and Confer request, 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, please 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.

Ms. Whitten
June 5, 2013
Page 3

Pursuant to HSC section 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 Beliz Chappuie, Supervisor or Anna Kyumba, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Esther O. Strong, Administrative Analyst, City of Avenal
Ms. Cassandra Mann, Property Tax Manager, County of Kings, Auditor-Controller
California State Controller's Office