



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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July 3, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated June 5, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Avenal Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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 was 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 completed its review of your DDR and issued an OFA DDR determination letter on June 5, 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 June 19, 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:

- Transfers to the City of Avenal totaling \$6,355,796 are partially approved. The transfers are comprised of the Avenal Theater (Theater) and equipment in the amount of \$5,988,581 and cash for the maintenance of the Theater in the amount of \$367,215. Based on further review during the Meet and Confer process, Finance continues to deny the transfer of the Theater and equipment and reverses its adjustment of \$367,215, as further discussed below.
 - The transfer of the Theater and equipment in the amount of \$5,988,581 continues to be denied. The Agency contends that when the Theater burned down in November 2003, the insurance policy on the Theater was being paid by the City of Avenal (City) and not the former Redevelopment Agency (RDA). The City received the insurance proceeds for the replacement settlement as well as used City general funds to build additional conference rooms onto the Theater. A review of the grant deed indicates that the former RDA took possession of the Theater on February 16, 2000 and retained possession of the Theater up until May 4, 2011, when the property was deeded and transferred to the City. This

transfer was pursuant to the actions taken on April 28, 2011 where the City Council/former RDA Board concurrently passed City Resolution No. 2011-29 and former RDA Resolution No. 2011-06 wherein both parties agreed to transfer the Theater building for the consideration of \$2,000 in order to protect and preserve the historical Theater. The concurrent resolutions state that the City Manager/former RDA Director determined that the \$2,000 consideration was based upon fair market value and other principles which were uniquely applicable to the Theater property.

However, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012, must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former RDA prior to June 28, 2011, with a third party other than the city, county, or city and county that created the former RDA. 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, the transfer of the Theater and equipment was not made pursuant to an enforceable obligation and is not permitted. Since the Theater and equipment are non-liquid assets, Finance made no adjustments to the available OFA balances for this item.

The non-liquid assets transferred to the City are subject to the California State Controller's Office (SCO) review of asset transfers. To the extent the Theater property does not meet criteria outlined in HSC section 34181 (a), it 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. 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 transfer of \$367,215 of cash is no longer denied. The agency contends the \$367,215 was initially transferred to the City along with the Theater property, but the amount was later transferred back to the Agency. A review of the documents provided indicates that the former RDA resolution dated January 26, 2012 transferred the former RDA's remaining funds to the City for the Theater's expenses and maintenance costs. The Agency provided documentation to demonstrate that the \$367,215 transfer was reversed and the funds were returned to the Agency on June 4, 2012. In addition, the amount is already included in the OFA DDR cash balance as of June 30, 2012. Therefore, an increase to the OFA balance in the amount of \$367,215 is not necessary. Finance has reversed the adjustment.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to \$0, as reported on the DDR.

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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, Dispute Resolution Supervisor, or Derk Symons, 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