DEPARTMENT OF FINANCE
CALIFORNIA

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REVISED

July 19, 2013

Mr. Dan Paranick, Interim Executive Director
City of Camarillo
601 Carmen Drive
Camarillo, CA 93011-0248

Dear Mr. Paranick:

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 Camarillo Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 3, 2012. 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 10, 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:

- Asset transfer in the amount of $11,843,650. Our review indicates the transfer was made to the City of Camarillo (City) for a loan repayment on January 26, 2011. The transfer consisted of $11,265,365 from bond proceeds and $578,285 from OFA balances. 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 redevelopment agency (RDA) and the former RDA. These loans were issued after the first two years of the RDA's creation. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. The OFA balances available for distribution will be increased by $578,285.

  For DDR purposes, the disallowed transactions related to the bond proceeds will not affect the amount available for distribution to the affected taxing entities since bond proceeds are legally restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds.

  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.

The repayment of these loans may become enforceable obligations after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- Asset transfer in the amount of $1,487,285. Our review indicates three transfers of "excess tax increment" were made to the City for safekeeping purposes: (1) $817,112 on January 26, 2011; (2) $169,645 on March 16, 2011; and (3) $500,527 on January 31, 2012. During Finance's initial review, the Agency was unable to provide supporting documents for these transactions. During the Meet and Confer process, the Agency provided additional information for each of the transfers. Based on the additional information provided, Finance reverses $1,309,016 of the adjustment. However, Finance continues to object to the $169,645 transfer of bond proceeds and continues to increase OFA balances available by $8,623, as further discussed below:

    - Of the $1,317,639 ($817,112 + $500,527) transferred in cash, $449,294 was transferred back to the Agency on February 1, 2012. For January 2011 through January 2012, administrative costs totaled $859,722. Therefore, Finance reverses $1,309,016 ($859,722 + $449,294) of the adjustment and continues to increase the OFA balance available by $8,623 ($1,317,639 - $859,722 - $449,294).

    - Retention amounts for a project being held by the City totaling $169,645. The Agency stated that this amount consists of bond proceeds and that the bond proceeds have already been expended; however, HSC section 34177 (a) (3) states that commencing on the date the ROPS is valid pursuant to subdivision (l) of HSC section 34177, only those payments listed in the ROPS may be made by the successor agency from the funds specified in the ROPS. All requests for the use of these bond proceeds have been previously denied by Finance. Pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the city or county, or city and county that created a RDA for which an enforceable obligation does not exist is not permitted. Therefore, the Agency should recover the bond proceeds from the City. Since these are bond funds, Finance made no adjustments to the available balance to the affected taxing entities.

Additionally, we noted the following improper transfers of property and bond proceeds to the City:

- Property transfer in the amount of $30,568,510. Our review indicates two invalid property transfers were made to the City: (1) $14,193,100 in real property on March 16, 2011; and (2) $16,375,410 in capital assets on March 16, 2011. Per HSC section 34191.3, the requirements in subdivision (e) of HSC section 34177 and subdivision (a) HSC section 34181 shall be suspended, except as those provisions apply to the transfers for governmental use, until the Finance has approved a long-range property management plan (LRPMP). These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. Since these are non-liquid assets, Finance made no adjustments to the available balance to the affected taxing entities.

However, the Agency is required to reverse the improper transfers and recover the assets. Pursuant to HSC section 34191.5, the Agency should include these properties in the inventory of all former RDA properties and describe the planned disposition of each property in its LRPMP.

Finance notes, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former RDA is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. 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.

- Transfer of bond proceeds in the amount of $8,611,926. Our review indicates $15,262,545 bond proceeds were transferred to the City on January 26, 2011. Although the City returned $6,650,619 of unused bond proceeds to the Agency on February 1, 2012, the Agency was not able to provide documentation to demonstrate that the Agency was contractually committed to spend the $8,611,926 retained by the City. The Agency stated that the bond proceeds have already been expended; however, HSC section 34177 (a) (3) states that commencing on the date the ROPS is valid pursuant to subdivision (l) of HSC section 34177, only those payments listed in the ROPS may be made by the successor agency from the funds specified in the ROPS. All requests for the use of these bond proceeds have been previously denied by Finance. Pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the city or county, or city and county that created a RDA for which an enforceable obligation does not exist is not permitted. Therefore, the Agency should recover the bond proceeds from the City. Since these are bond funds, Finance made no adjustments to the available balance to the affected taxing entities.

  Once the Agency receives a finding of completion pursuant to HSC section 34179.7, the Agency will be permitted to use bond proceeds derived from bonds issued on or before December 31, 2010, for the purposes for which the bonds were sold.

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:

- Balances retained for fiscal year 2012-13 obligations in the amount of $10,731,503. The Agency's request to retain OFA balances for the amount to cover debt service payments is not allowed. Finance has only approved funding through the January through June 2013 ROPS (ROPS III) period, the Agency's fund balances are only encumbered to the extent they have been approved on a ROPS through the June 30, 2013 period. The cash flow analysis provided by the Agency does not demonstrate an immediate need to retain these unencumbered OFA balances, nor does it suggest available funding will be insufficient to service the Agency's bond debt.

  Subsequent to the Meet and Confer process, the Agency provided additional information to Finance showing that insufficient funds would be available during the July through December 2013 ROPS (ROPS 13-14A) period. Finance approved $463,627 to be funded from Reserve balances and $2,108,970 to be disbursed from the Redevelopment Property Tax Trust Fund (RPTTF) for enforceable obligations. The CAC distributed $1,380,421 from the RPTTF for the ROPS 13-14A period, which resulted in a shortfall of $1,192,176 ($463,627 + $2,108,970 - $1,380,421) for the ROPS 13-14A period. Therefore, the Agency may retain $1,192,176 in OFA balances to ensure sufficient funds will be available in the ROPS 13-14A period. As such, the OFA balances available will be increased by $9,539,327 ($10,731,503 - $1,192,176).

Should a deficit occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

The Agency's OFA balance available for distribution to the affected taxing entities is $13,359 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(10,112,876)
Finance Adjustments		
Unallowed Transfers		
Loan Repayment	$	578,285
Excess Tax Increment	$	8,623
Requested retained balances not supported	$	9,539,327
Total OFA available to be distributed:	$	13,359

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

Jamie for

STEVE SZALAY
Local Government Consultant

cc: Mr. Ronnie Campbell, Director of Finance, City of Camarillo
Ms. Sandra Bickford, Chief Deputy, Ventura County Auditor Controller
California State Controller's Office