



April 25, 2013

Mr. Kevin Radecki, City Manager
City of Industry
15625 East Stafford Street
City of Industry, CA 91744

Dear Mr. Radecki:

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 19, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Industry Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 16, 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 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 April 5, 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:

- Legally restricted investments with the fiscal agents in the amount of \$86,180,905 were partially denied in the amount of \$28,775,373. Of the amount claimed, \$35,901,642 is legally restricted bond reserve funds, \$14,421,307 is legally restricted City loan proceeds, and \$35,857,952 is tax increment funds pledged to bond debt service payments held by fiscal agents. Of the \$35,857,952 in tax increment funds and \$66,082 in interest income, \$7,148,661 was used by the fiscal agent to make senior bond payments and the remaining amount of \$28,775,373 was released from the fiscal agent and transferred to the Agency on November 27, 2012 per bond indenture requirements. The Agency used the \$28,775,373 to pay the subordinate bond payments in December 2012. Therefore, Finance is reversing its original adjustment of \$28,775,373.
- The Agency requested to retain \$56,108,484 in OFA balances to cover obligations was not allowed. However, based on further review during the Meet and Confer process, the Agency may retain \$38,922,615 (\$5,603,288 + \$33,319,327) in OFA balances for approved enforceable obligations during fiscal year 2012-13; consequently, the OFA balance available will be increased by \$17,185,869 (\$56,108,484 - \$38,922,615), as further discussed below.

For the July through December 2012 Recognized Obligation Payment Schedule period (ROPS II), Finance approved \$36,555,583 and the County Auditor Controller (CAC) distributed \$16,735,424 from the Redevelopment Property Tax Trust Fund (RPTTF). This resulted in a shortfall for the ROPS II period. The subordinate bond payments for the ROPS II period totaled \$34,378,661 and the Agency used the \$28,775,373 received from the fiscal agent (refer to first bullet above) plus \$5,603,288 from the OFA balances to make the payment. Therefore, the Agency may retain \$5,603,288 for the ROPS II period.

For the January through June 2013 Recognized Obligation Payment Schedule period (ROPS III), Finance approved \$39,633,415 and the CAC distributed \$7,675,288 from the RPTTF. In addition, the CAC adjusted the January 2, 2013 ROPS III distribution by \$26,699 pursuant to HSC section 34186 (a). This resulted in a \$31,931,428 (\$39,633,415 - \$7,675,288 - \$26,699) shortfall for the ROPS III period. Furthermore, Finance approved \$1,361,200 to be expended from OFA balances. Therefore, the Agency may retain a total of \$33,319,327 (\$31,931,428 + \$26,699 + \$1,361,200) to ensure sufficient funds are available for ROPS III approved enforceable obligations.

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 pursuant to HSC section 34177 (d) (1) (A), 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.

During the Meet and Confer process, the Agency stated that \$18,755,000 of the amount requested to be retained is the subject of ongoing litigation. Finance recognizes there is an injunction in place sequestering funds and an ongoing lawsuit that will impact the currently sequestered funds and future ROPS requests. These amounts are already accounted for through other processes. Therefore, the amounts required for remittance to the affected taxing entities, as identified in this letter, are owed regardless of the outcome of the lawsuit.

The Agency's OFA balance available for distribution to the affected taxing entities is \$17,185,869 (see table on the next page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Requested retained balance not supported:	17,185,869
Total OFA available to be distributed:	\$ 17,185,869

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,



STEVE SZALAY
Local Government Consultant

cc: Ms. Linda Pollock, Contracted Finance Manager for City of Industry
Ms. Chris Brown, Administrative Assistant, City of Industry
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office