DEPARTMENT OF FINANCE

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May 9, 2013

Mr. Nick Wells, Finance Manager
City of Holtville
121 W Fifth Street
Holtville, CA 92250

Dear Mr. Wells:

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 April 9, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Holtville Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 26, 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). Finance issued an OFA DDR determination letter on April 9, 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 30, 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:

- Disallowed transfer in the amount of $90,634. Transfer to the Historical Fund was made pursuant to the March 26, 2007 Redevelopment Agency (RDA) meeting minutes. 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, and indebtedness obligations as defined in subdivision (e) 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 RDA and the former RDA. RDA meeting minutes are not considered to be contracts and the City is not a third party; therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted. As such, Finance continues to increase the OFA balance available by $90,634.

- Non-cash assets in the amount of $306,759. The amount consists of $114,899 due from the City of Holtville and $191,860 in advances to the City of Holtville. The Agency only provided a resolution from the former RDA's Board approving the loans, but was not able to provide loan agreements to demonstrate the outstanding loan amounts and the repayment terms. Without a valid contract or repayment schedule, this loan is considered payable on demand and should be included as part of the June 30, 2012 balance. Per HSC section 34179.5 (b) (1), "cash" and "cash equivalents" include payables on demand. As such, the OFA available for distribution to the taxing entities will be increased by $306,759.

  During the Meet and Confer process, the Agency stated that the amount due from the City should be offset by the amount payable to the City as reported in the financial statements as of June 30, 2012. However, the amounts due from and to the City are separate transactions and should not be offset. The repayment of any amounts owing to the City 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.

The Agency's OFA balance available for distribution to the affected taxing entities is $3,554 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(393,839)
Finance Adjustments		
Disallowed asset transfers	$	90,634
Adjustment to non-cash assets		306,759
Total OFA available to be distributed:	$	3,554

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: Mr. Alex Meyerhoff, City Manager, City of Holtville
Ms. Ann McDonald, Special Accounting Manager, County of Imperial
California State Controller's Office