



April 2, 2013

Mr. Kevin McCarthy, City Finance Director/Redevelopment Agency Treasurer  
City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells, CA 92210-7497

Dear Mr. McCarthy:

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 5, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Indian Wells Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 19, 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 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 March 13, 2013.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising the adjustments made in our previous OFA DDR determination letter. Specifically, the following adjustments were made:

- Assets in the amount of \$4,096,021; the DDR did not include this amount in the cash balance. Our review indicates that the total cash and investments should be \$5,180,948 instead of \$1,084,927. Therefore, the beginning balance should be increased by \$4,096,021.
- Transfers in the amount of \$1,339,192. Our review indicates that \$1,339,192 was transferred to pay for an operating loan between the City of Indian Wells and the Agency for administrative costs. 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 RDA and the former RDA. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. As such, the amount available for distribution to the affected taxing entities should be increased by \$1,339,192.
- Balances retained for funding of an enforceable obligation in the amount of \$3,276,060. Our analysis indicates that the pass-through payments listed on page 19 of the DDR report were paid in June 2012; therefore, retention of the \$3,276,060 for these payments in the July through December 2012 period is not necessary since it had already been

paid for during the January through June 2012 period. The payment is already reflected in the beginning cash balance as of June 30, 2012. Therefore, the amount available for distribution should be increased by \$3,276,060.

However, the Agency may retain \$6,910,508, which was distributed by the Riverside County Auditor Controller (CAC) for the July through December 2012 period, and \$5,993 for the January through June 2013 period. As part of the January through June 2013 Recognized Obligation Payment Schedule (ROPS) review, the CAC adjusted the ROPS III January 2, 2013 distribution for the prior period by \$5,993 pursuant to HSC section 34186 (a). Since the Agency already requested to retain \$566,563 for the ROPS II period, the amount available for distribution to the affected taxing entities should be decreased by \$6,349,938 (\$6,910,508 + \$5,993 - \$566,563).

Based on the adjustments noted above, Finance is increasing the amount requested to be retained to fund enforceable obligations by \$3,073,878 (\$3,276,060 - \$6,349,938).

The Agency's OFA balance available for distribution to the affected taxing entities is \$0 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (2,756,940)
Finance Adjustments:	
Adjustment to the June 30, 2012 balance	\$ 4,096,021
Disallowed transfers	\$ 1,339,192
Requested retained balance	\$ (3,073,878)
<b>Total OFA available to be distributed:</b>	<b>\$ (395,605)</b>

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

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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. Mel Windsor, Personnel Director, City of Indian Wells  
Ms. Pam Elias, Chief Accountant Property Tax Division, County of Riverside  
Auditor-Controller  
California State Controller's Office