DEPARTMENT OF FINANCE
CALIFORNIA

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May 17, 2013

Ms. Suzanne Mallory, Finance Director
City of Manteca
1001 West Center Street, Suite B
Manteca, CA 95337

Dear Ms. Mallory:

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 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Manteca Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 8, 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 April 1, 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 23, 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:

- Assets transferred to the City of Manteca (City) in the amount of $54,500,000 was previously increased by $3,055,523 to $57,555,522. Finance identified transfers of $2,300,000 in cash not supported by enforceable obligations and $755,523 in capital assets. However, during the Meet and Confer, the Agency provided clarifying information showing that the $2,300,000 was transferred back to the Agency in May 2012 and the $755,523 was related to a property purchase made by the former Redevelopment Agency (RDA) from the City in August 2010. Therefore, Finance is reversing its previous adjustment of $3,055,523.

- Assets that are not cash or cash equivalents is reduced by $1,700,000. The former RDA advanced this amount to the City in fiscal year 2009-10. The Agency asserts the advance was deemed to be a long-term loan per the City's fiscal year 2009-10 budget report and audited financial statements. However, 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 $1,700,000. If full payment and recovery of the loan is not currently feasible, the Agency may submit an installment plan for Finance's review and approval pursuant to HSC section 34179.6 (h) (1) (D) (3).

- Balances requested to be retained in the amounts of $6,267,451 and $13,865,067 for obligations. Based on further review during the Meet and Confer process, the Agency may retain $11,671,050 ($222,406 + $5,972,204 + $1,700,000 + $1,040,918 + $2,676,703 + $58,819) for enforceable obligations, as further discussed below. Accordingly, the OFA balance available will be increased by $8,461,468 ($6,267,451 + $13,865,067 - $11,671,050).

  - For the January through June 2012 Recognized Obligation Payment Schedule (ROPS I) period, the Agency reported $222,406 in accounts payable as of June 30, 2012, in the DDR. Therefore, the Agency may retain $222,406 for ROPS I expenditures paid after June 30, 2012.

    Finance notes that amounts requested and approved in a ROPS are effective only for the six-month period covered. To the extent the Agency does not expend funds approved and received on a ROPS until a subsequent period, the Agency should relist the unexpended amounts that need to be retained for those enforceable obligations on the subsequent ROPS with the funding source as "Reserves" or "Other" and an entry in the Notes section indicating the funds were received in a prior ROPS period.

  - For the July through December 2012 (ROPS II) period, Finance approved $7,901,634 and the County Auditor Controller (CAC) distributed $3,988,934 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency stated that they expended $1,983,270 and requested to retain from OFA balances to cover the shortfall. Therefore, the Agency may retain $5,972,204 ($3,988,934 + $1,983,270) for the ROPS II period.

    Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

  - For the January through June 2013 (ROPS III) period, Finance approved and the CAC distributed $5,977,742 from the RPTTF. The CAC did not make any adjustments for the ROPS I period on the ROPS III January 2, 2013 distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process. However, Finance approved $15,423,744 ($15,287,444 + $136,300) to be expended from OFA balances. During the Meet and Confer process, the Agency estimated that approximately $1.7 million of the approved amount would be used. Therefore, the Agency may retain $1.7 million to fund approved ROPS III enforceable obligations.

- For the July through December 2013 (ROPS 13-14A) period, the Agency requested to retain $5,764,475 to allow the Agency to have funds on hand equal Letter of Credit (LOC) issued by State Street Bank and Trust Company that is backing the Agency's variable rate bonds. The Letter of Credit has since been extended; therefore, the amount requested to be retained is no longer necessary and is therefore not permitted.

  During the Meet and Confer process, the Agency also requested to retain $6,003,000, at minimum, in unencumbered OFA balances for fees related to the same Letter of Credit (LOC) referenced above. The Agency asserts the amount represents potential fees to be paid by the Agency in case of a bond rating downgrade. However, ABx1 26 and AB 1484 only allows agencies to maintain reserves but for those required for indentures, trust indentures, or similar documents governing the issuance of outstanding RDA bonds as referenced in HSC section 34177 (b). The statute does not currently recognize all anticipated obligations, thus creation of reserves for the LOC fees are not permissible. In addition, the Agency has not adequately demonstrated the amounts are owed or are expected to be owed. Therefore, the request to retain OFA balances in the amount of $6,003,000 is not allowed.

  However, Finance has approved $6,208,519 through the ROPS 13-14A Meet and Confer process and the CAC has estimated $5,167,601 will be available for distribution from the RPTTF. Therefore, the Agency may retain $1,040,918 ($6,208,519 - $5,167,601) to ensure sufficient funds are available to cover all approved enforceable obligations in the ROPS 13-14A period. In addition, the Agency will be allowed to retain $2,676,703 in reserves and $58,819 in other funds approved for the ROPS 13-14A period.

  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.

The Agency's OFA balance available for distribution to the affected taxing entities is $10,161,469 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	1
Finance Adjustments		
Add:		
Assets that are cash or cash equivalent		1,700,000
Request to retain balances not supported		8,461,468
Total OFA available to be distributed:	$	10,161,469

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. Donald Smail, Economic Development Manager, City of Manteca
Mr. Adrian Van Houten, Auditor Controller, County of San Joaquin
Ms. Sandra Chan, Chief Deputy Auditor Controller, County of San Joaquin
Mr. Jeff Woltkamp, Assistant County Auditor Controller, County of San Joaquin
California State Controller's Office