



REVISED

October 10, 2013

Ms. Hannah Chung, Finance Director  
City of Tehachapi  
115 S. Robinson Street  
Tehachapi, CA 93561

Dear Ms. Chung:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letters dated May 1, 2013 and June 6, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Tehachapi Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance. 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 May 1, 2013. Subsequent to a Meet and Confer process on one or more items adjusted by Finance, Finance issued a final determination letter on June 6, 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:

- Cash transferred to the City of Tehachapi (City) during the period of January 1, 2011 through June 30, 2012 totaling \$1,392,932 continues to be denied. The Agency claims the following amounts were costs associated with the respective bond funded projects:
  - Centennial Plaza: \$167,025 on March 8, 2011 and \$130,207 on June 30, 2011
  - Downtown Beautification Phase 2: \$200,000 on March 8, 2011
  - Downtown Master Plan Implementation: \$100,000 on May 31, 2011
  - Mill and H Improvement: \$6,206 on June 30, 2011
  - Railroad Depot: \$686,680 on April 30, 2011
  - Tehachapi Blvd Improvement IV: \$50,814 on June 30, 2011 and \$52,000 on December 31, 2011

The Agency contends the transfers are bond proceeds and represent the former Redevelopment Agency's (RDA) portion of project-related costs. However, documentation provided by the Agency do not adequately support that the costs are the obligation of the former RDA. The contracts for the above-referenced projects were entered into by the City with third parties; the former RDA is neither a party to the contracts nor responsible for payment of the contracts. Additionally, the project expenditures have either not been listed on an approved Recognized Obligation

Payment Schedule (ROPS) or have been listed on the ROPS for \$0 funding. Therefore, these items are not enforceable obligations.

Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency 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 redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA. The transfers were not made pursuant to an enforceable obligation and are not permitted.

Subsequent to the Meet and Confer process, the Agency provided additional documentation that supports \$1,290,118 in bond proceeds. For DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds. The OFA balance available for distribution will be increased by the remaining transfers of \$102,814 (\$1,392,932 - \$1,290,118).

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. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

- Balance needed to satisfy enforceable obligations for fiscal year 2012-13 in the amount of \$722,213 continues to be partially denied. During the Meet and Confer, the Agency requested the retention be increased from \$722,213 to \$764,867; however, the request to retain additional funds is denied, as discussed below.

Exhibit D of the DDR indicates the \$722,213 request for retention of funds is for the July through December 2012 ROPS (ROPS II) period. The County Auditor Controller (CAC) distributed \$512,851 in Redevelopment Property Tax Trust Funds (RPTTF) for the ROPS II period. These funds were received prior to and are therefore included in the June 30, 2012; therefore, the Agency may retain the \$512,851.

In addition, the Agency requested to retain \$209,362 in OFA balances for the ROPS II period. Based on our review, the Agency did not receive all approved RPTTF for the ROPS II period; however, the Agency received a loan from the City to pay for the remaining \$209,362 in unfunded enforceable obligations. This loan was included on the July through December 2013 ROPS (ROPS 13-14A) and was approved for payment out of RPTTF. Therefore, Finance has determined the funds provided by the City for unfunded enforceable obligations will be repaid through a separate process and retention of OFA funds is not warranted. As such, the OFA balance available for distribution will be increased by \$209,362.

The Agency's OFA balance available for distribution to the affected taxing entities is \$77,854 (see table on following page).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (234,322)
Finance Adjustments	
Add:	
Disallowed transfers:	102,814
Requested retained balance not supported:	209,362
<b>Total OFA available to be distributed:</b>	<b>\$ 77,854</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 section 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.

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Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



Justyn Howard  
Assistant Program Budget Manager

cc: Ms. Daisy Wee, Accounting Officer, City of Tehachapi  
Ms. Mary B. Bedard, Auditor-Controller, Kern County  
California State Controller's Office