DEPARTMENT OF FINANCE

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REVISED

November 19, 2013

Mr. John C. Prescott, Community Developer Director
City of Thousand Oaks
2100 Thousand Oaks Blvd.
Thousand Oaks, CA 91362

Dear Mr. Prescott:

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 letters dated March 22, 2013 and April 26, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Thousand Oaks Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 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 22, 2013. Subsequent to a Meet and Confer process on one or more items adjusted by Finance, Finance issued a final determination letter on April 26, 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 assets in the amount of $7,641,148. Our review indicates the Auto Mall parking project was denied as an obligation during the January through June 2013 Recognized Obligation Payment Schedule (ROPS III) review. Finance denied the item as no contracts have been issued for the construction of public improvements and the contingencies under Section 4 of the Funding Agreement dated March 8, 2011 has not been fully satisfied. The Agency contends the item is an enforceable obligation because the Funding Agreement entered into March 8, 2011 obligated the former RDA to help fund certain public improvements that directly benefited the Auto Mall. However, Paragraph 7, "Expiration of Agreement," states the Agreement will automatically expire one year from the effective date of the Agreement, or on March 8, 2012, "if no portion of the Agency Contribution has been disbursed in accordance with Paragraph 5 within one year of the effective date of this Agreement." Paragraph 5 is for disbursal of progress payments to the general contractor constructing the public improvements.

  Based on the Agency's description of events, a general contractor has not yet been selected and the Agency went out to re-bid as recently as November 13, 2012. Therefore, the Agreement would have expired by its own terms and is therefore not an enforceable obligation. Paragraph 7 goes on to state "Upon expiration, the Agency Contribution and CFD Finance Funds held in escrow shall revert to Agency."

Subsequent to the Meet and Confer process, and after meeting with all parties involved, it has been determined that $411,738 is no longer available. Therefore, the OFA balance available will be increased by $7,229,410 ($7,641,148 - $411,738).

- Balances retained for fiscal year 2012-13 obligations in the amount of $320,478 ($57,852 + $9,600 + $3,026 + $250,000). Our review indicates balances retained for the following obligations are not allowable as specified below:

  - Auto Mall Parking for $57,852. The DDR identifies this amount to be associated with Item 17 on ROPS III, which was denied on ROPS III. Therefore, the OFA balance available is being increased by $57,852.

  - TO Business Improvement District for $9,600. The DDR identifies this amount to be associated with Item 19 on ROPS III; however, no funding was requested on ROPS III. Therefore, the OFA balance available is being increased by $9,600.

  - TOP BID Assessments for $4,539. The DDR identifies this amount to be associated with Item 22 on ROPS III. The Agency only requested $1,513 in reserve funds during ROPS III period and Finance did not deny the amount. Therefore, the OFA balance available is being increased by the difference between the requested and approved amount of $3,026 ($4,539 - $1,513).

  - Administrative costs for $250,000. The Agency received Redevelopment Property Tax Trust Fund distribution for ROPS III period in January 2013, which was not included in the June 30, 2012 beginning balance. The Agency did not object to this adjustment during the Meet and Confer process. Therefore, the OFA balance available is being increased by $250,000.

- In the DDR, $1,148,843 was requested to be retained to cover projects from the Low and Moderate Income Housing Fund (LMIHF). Since there were insufficient reserves remaining in the LMIHF to cover the projects, the Agency should request funds from the RPTTF through the Recognized Obligation Payment Schedule process to cover any remaining amounts due. Therefore, Finance is using $6,142,569 as the beginning balance rather than $4,993,726.

The Agency's OFA balance available for distribution to the affected taxing entities is $13,692,457 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	6,142,569
Finance Adjustments		
Legally restricted assets	$	7,229,410
Unallowed balances retained		320,478
Total OFA available to be distributed:	$	13,692,457

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.

Please direct inquiries to Evelyn Suess, Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

JUSTYN HOWARD
Assistant Program Budget Manager

cc: Mr. John F. Adams, Finance Director, City of Thousand Oaks
Ms. Sandra Bickford, Chief Deputy, Ventura County Auditor Controller
California State Controller's Office