



May 4, 2013

Mr. Eric Frost, Administrative Services Director
City of Visalia
707 W. Acequia Ave.
Visalia, CA 93291

Dear Mr. Frost:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Visalia Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on December 12, 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 29, 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 May 2, 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:

- Out of the \$6,693,411 requested to be retained, Finance originally denied \$4,276,488. Based on further review during the Meet and Confer process, the Agency may retain an additional \$855,559. Accordingly, the OFA balance available will be increased by \$3,420,929 (\$4,276,488 - \$855,559), as further discussed below:
 - During the Meet and Confer process, the Agency requested to retain \$3,420,929 in unused balances from loans provided by the City of Visalia (City) to the former Redevelopment Agency (RDA) in 2009 from the City's General Fund. The amount represents the outstanding principal and interest related to a loan agreement entered into between the City and the former RDA. The Agency stated that these unencumbered and unobligated funds were being held in a constructive trust for future RDA projects and is the property of the City.

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. 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.

The repayment of these loans 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 Schedule for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- The Agency requested to retain \$855,559 to cover obligations approved in the January through June 2012 ROPS (ROPS I). During the Meet and Confer process, the Agency provided supporting documents showing \$855,559 was not paid until after June 30, 2012. Therefore, the Agency may retain \$855,559 to cover the ROPS I expenditures that were paid for ROPS I obligations.

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

- Transfer of Land Held for Resale to the City in the amount of \$3,534,327 is disallowed. The RDA transferred land to the City that was purchased with advances received from the City's General Fund. As stated above, HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the former redevelopment agency (RDA) and the RDA are not enforceable; therefore, the transfer of land to pay the principal and interest cost of the advance is not permitted. Since property is not considered cash or cash-equivalent asset, Finance has made no adjustment to the available balance to the affecting taxing entities for this amount.

This non-liquid asset transferred to the City is subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

Finance notes, however, that to the extent the City would like to retain these parcels, HSC section 34191.5 (c) (2) states that one of the property disposition options available to the successor agency of the former redevelopment agency is the retention of property for future development purposes pursuant to an approved Long Range Property Management Plan. If this option is selected, HSC section 34180 (f) (1) states that the city, county, or city and county must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base

property tax, as determined pursuant to HSC section 34188, for the value of the property retained.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- Assets held by the Agency in the amount of \$1,208,912. Finance disallowed a transfer of \$1,208,912 from the Low and Moderate Income Housing Fund (LMIHF) to other Agency funds during the review of the LMIHF DDR as stated in Finance letter dated January 11, 2013. This transfer has also been reported as a transfer-in on its non-housing DDR as available unencumbered cash. However, the Agency agreed to include the amount as part of the balance to be remitted the affected taxing entities pursuant to LMIHF DDR review. Therefore, Finance is making an adjustment to reduce the Agency's available OFA balance by \$1,208,912 to account for the LMIHF DDR adjustment.
- A cash transfer in the amount of \$670,000. Our review noted a transfer was made to the City on March 7, 2011. The Agency was not able to provide sufficient documentation to demonstrate that the Agency was contractually committed to third party. The Meeting Agenda and City Council Resolutions provided do not establish an enforceable obligation; therefore, the transfer is not allowed. HSC section 34167.5 states that asset transfers occurring after January 1, 2011 between the RDA and City that created the RDA must be contractually committed to a third party. Finance adjusted the balance by \$670,000.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to \$4,692,406. (See table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 1,810,389
Finance Adjustments	
Adjustment to June 30, 2012 Balance	\$ (1,208,912)
Disallowed transfers	\$ 670,000
Unallowed balances retained for fiscal year 2012-13	3,420,929
Total OFA available to be distributed:	\$ 4,692,406

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 Derk Symons, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Ruth Pena, Financial Analyst, City of Visalia
Ms. Rita Woodard, Auditor-Controller, County of Tulare Auditor-Controller
California State Controller's Office