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REPLY TO:
☒ ROSEVILLE
☐ MADERA
☐ ONTARIO

January 23, 2013

VIA FIRST CLASS MAIL

Sean Rabé
City Manager
18 Main Street
Sutter Creek, CA 95685

Re: Use of 2003 Relinquishment Funds

Dear Sean:

This letter is written in response to your inquiry regarding the spending limitation, if any, associated with the lump-sum payment made to the City of Sutter Creek ("City") as part of a Contribution Agreement to relinquish a portion of State Highway 49 with the Department of Transportation ("State"). This relinquishment was made as part of an agreement between the State and City dated March 17, 2003.

Streets and Highways Code section 73 requires that, prior to relinquishment to any county or city of any portion of any state highway that has been superseded by relocation, the State place the highway in a state of good repair. Consistent with this section, and after negotiation with the City, the State and City agreed to a lump sum payment of \$3,049,600.00, the estimated cost necessary to put the affected portion of Highway 49 in a state of good repair. By the terms of the agreement, this payment relieved the State of its obligation to place the relinquished portion of Highway 49 in a state of good repair prior to its relinquishment to the City. Additionally, by accepting the payment, the City agreed to accept full ownership, maintenance, operation and liability of the relinquished highway.

When the City agreed to the State's relinquishment of the affected portion of Highway 49, the City agreed to assume all of the State's responsibility for the maintenance and safety of the highway. In this case, the payment essentially acted as a payoff for that acceptance of liability. The purpose of the payment was also to enable the City to complete the construction of the Sutter Creek Bridge (Bridge No. 26-0015) after the completion of the Amador 49 Bypass.

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Although the City has accepted responsibility for the affected portion of Highway 49 and Sutter Creek Bridge, I do not conclude that the payment the State has provided the City have any specific restrictions. That is, I do not conclude that the City is legally required to expend the relinquishment funds only on maintenance of the relinquished portion of the highway and the Sutter Creek Bridge. I have found no provision in State law or the relinquishment agreement that places restrictions on how the relinquishment funds are spent.

It is important to remember, however, that the City has assumed full responsibility for the maintenance of the relinquished highway and bridge. The City alone will be held liable for any injury caused by a defective condition in the property under its control. (See *City of Cloverdale v. Department of Transp.* (2008) 166 Cal.App.4th 488.) Thus, while there is no legal mandate that the funds be used only for highway maintenance and bridge construction, it may be financially prudent to reserve the funds for only those uses.

Please do not hesitate to contact me should you have any questions.

Sincerely,



Derek P. Cole
COTA COLE LLP