



May 31, 2013

Mr. Kerry Breen, Assistant Finance Director
City of Brentwood
150 City Park Way
Brentwood, CA 94513-1164

Dear Mr. Breen:

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 26, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Brentwood Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on February 11, 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 26, 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 21, 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:

- Asset transfers to the City of Brentwood (City) in the amount of \$19,619,350 (\$15,465,928 + \$4,153,422) continue to be denied. Our review indicates the transfer was made to the City in the amount of \$15,465,928 of unrestricted cash and \$4,153,422 in bond proceeds. The Agency contends that the transfer of funds were for public improvement projects to be carried out by the City on behalf of the former Redevelopment Agency (RDA). The Agency provided various documents including former RDA/City resolutions and the City's budget. However, the documents do not obligate the RDA or commit the RDA funds for these projects.

Pursuant to 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, and indebtedness obligations as defined in subdivision (e) of Section 34171. 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. In addition, contracts provided for the projects were between the City and a third party. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. As such, the OFA balances available for distribution will be increased by \$15,465,928.

For DDR purposes, the disallowed transactions related to the bond proceeds will not affect the amount available for distribution to the affected taxing entities since bond proceeds are legally restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds. 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 and are required to be placed on future Recognized Obligation Payment Schedules.

- Transfers of land totaling \$1,327,129 to the City continue to be denied. The Agency improperly sold nine land parcels to the City during February through March 2011. 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 and should maximize value as required in HSC section 34171. These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers.

Finance notes 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.

- After review of the additional documents provided by the Agency during the Meet and Confer process, Finance approves the Agency's request to retain \$1,762,130 in current unencumbered OFA balances to cover 2012-13 approved enforceable obligations. Based on our review, the Agency is permitted to retain \$1,587,935 for the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 ROPS (ROPS II) period and \$174,195 for the January through June 2013 ROPS (ROPS III) period.

Should deficits 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 has been revised to \$14,955,931 (see table on following page).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (509,997)
Finance Adjustments	
Add:	
Disallowed transfers	\$ 15,465,928
Total OFA available to be distributed:	\$ 14,955,931

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.

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Michelle Hamblin, Business Services Manager, City of Brentwood
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office