



May 22, 2013

Mr. Scott Hanin, City Manager
City of El Cerrito Successor Agency
10890 San Pablo Avenue
El Cerrito, CA 94530

Dear Mr. Hanin:

Subject: Other Funds and Accounts Due Diligence Review

The City of El Cerrito Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on March 7, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance is not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). However, Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, the following adjustments were made:

- Transfers totaling \$2,729,989 are not allowed. The Agency transferred cash totaling \$748,000 to the City of El Cerrito (City) for administrative goods and services. However, there is no agreement in place to support the transfer of cash to the City. Additionally, the City transferred cash totaling \$1,981,989 to El Cerrito Municipal Services Corporation (MSC) pursuant to a Cooperative Agreement (Agreement) between the City, MSC, and the former redevelopment agency (RDA). HSC section 34171 (d) (2) states agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. Additionally, HSC section 34167.10 (a) (1) defines a city component as any reporting entity for purposes of its comprehensive annual financial report (CAFR). Finance notes that MSC is a component of the City CAFR; therefore, transfers to this entity are not allowable.

Finally, Finance denied the Agreement as an inclusion to the ROPS for the period July 2012 through June 2013; this decision was later upheld through the Meet and Confer process in our letter dated December 18, 2012. The Agreement was also denied as an inclusion to the ROPS for the period July through December 2013; later upheld through the Meet and Confer process in our letter dated May 18, 2013.

- Properties, capital assets, and bond proceeds transferred to MSC totaling \$10,568,563 are not allowed. The Agency transferred \$10,168,319 in properties and capital assets, along with \$400,243 in bond funds, to MSC pursuant to a Cooperative Agreement (Agreement) between the City, MSC, and the former RDA. HSC section 34171 (d) (2) states agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. Additionally, HSC section 34167.10 (a) (1) defines a city component as any reporting entity for purposes of its comprehensive annual financial report (CAFR). Finance notes that MSC is a component of the City CAFR; therefore, transfers to this entity are not allowable.

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Improper transfers should be reversed, and the Agency should recover the property, capital assets, and bond proceeds. The Agency should describe the planned disposition of the property in its long-range property management plan as required by HSC section 34191.5. For DDR purposes, however, these disallowed transfers will not affect the balance available for distribution to the taxing entities.

If you disagree with Finance’s adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance’s website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

The Agency’s OFA balance available for distribution to the affected taxing entities is \$2,729,989 (see table below):

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers	2,729,989
Total OFA available to be distributed:	\$ 2,729,989

Absent a Meet and Confer request, 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, please 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 section 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 Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Lori Trevino, Economic Development Manager
Mr. Bob Campbell, Auditor-Controller, County of Contra Costa
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State
Controller's Office