



June 28, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated May 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of El Cerrito Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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). Finance issued an OFA DDR determination letter on May 22, 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 June 18, 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:

- Transfers totaling \$13,298,551 (\$748,000 + \$1,981,989 + \$10,568,562) were not allowed. Based on additional information provided during the Meet and Confer process, Finance is reversing \$748,000 of its adjustment and continues to object to \$12,550,551 (\$13,298,551 - \$748,000) of the transfers, as further discussed below.

The former Redevelopment Agency (RDA) transferred cash totaling \$748,000 to the City of El Cerrito (City). During the Meet and Confer process, the Agency provided clarifying information that this transfer was related to administrative costs incurred for fiscal year 2011-12 that were reported on the Enforceable Obligation Payment Schedule for July through December 2011 and the Recognized Obligation Payment Schedule for January through June 2012. Therefore, Finance is reversing its adjustment of \$748,000.

The former RDA also transferred cash totaling \$1,981,989 and bond funds totaling \$400,243 to the El Cerrito Municipal Services Corporation (MSC) pursuant to a Cooperative Agreement (Agreement) between the City, MSC, and the former RDA.

Additionally, the former RDA transferred properties and capital assets to MSC totaling \$10,168,319.

MSC is included in the City's CAFR, is a component unit of the City, and the City is financially accountable. Pursuant to HSC section 34167.10 (a), the definition of "city" includes, but is not limited to, any reporting entity of the city for purposes of its comprehensive annual financial report (CAFR), any component unit of the city, or any entity controlled by the city or for which the city is financially responsible or accountable. Although MSC is a separate legal entity from the City, HSC section 34167.10 (c) states that it shall not be relevant that the entity is formed as a separate legal entity. Therefore, the Agreement is between the City and the former RDA.

Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former RDA 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 RDA 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 transfers were not made pursuant to an enforceable obligation and are not permitted.

We also note that the Agreement was denied on the ROPS for the periods July 2012 through June 2013 and July through December 2013, which were upheld through the Meet and Confer process in our letters dated December 18, 2012 and May 18, 2013, respectively.

The 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. However, for DDR purposes, the disallowed transfers of properties, capital assets, and bond proceeds will not affect the balance available for distribution to the taxing entities. Accordingly, the OFA balance available for distribution will be increased by \$1,981,989 for the disallowed transfer of cash.

If for some reason the Agency cannot immediately remit the entire sum, HSC section 34179.6 (h) (3) authorizes Finance to review requests for an installment payment plan. If the Agency wishes to make installment payments, please notify your Agency's assigned Finance review staff immediately. Upon receipt of your request, Finance will work with your Agency to determine whether installment payments are appropriate.

The Agency's OFA balance available for distribution to the affected taxing entities is \$1,981,989 (see table on following page):

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ -
Finance Adjustments	
Add:	
Disallowed transfers	1,981,989
Total OFA available to be distributed:	\$ 1,981,989

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 Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

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