



May 24, 2013

Mr. Marc Roberts, Executive Director of the LSA
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94551

Dear Mr. Roberts:

Subject: Other Funds and Accounts Due Diligence Review

The City of Livermore 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 12, 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:

- Cash in the amount of \$909,190. Our review of Agency's accounting records indicate that total cash held as of June 30, 2012 included \$909,190 from the Low-Moderate Income Housing Fund (LMIHF). Since the LMIFH balance was remitted to the County Auditor-Controller during the LMIHF DDR, cash reported on the OFA DDR should not include this amount. Therefore, the balance has been adjusted by \$909,190.
- Capital assets in the amount of \$13,166,107. Our review of Attachment A of the DDR report and other supporting documentation provided by the Agency noted the following invalid transfers.

Properties transferred for governmental use

- 20-22 South L Street valued at \$582,325
- 50 South L Street valued at \$1,302,044
- 62-90 South L Street valued at \$2,186,622
- 2164 Second Street valued at \$225,000
- Railroad Avenue at North I Street valued at \$208,400
- 2350-2418 Railroad Avenue valued at \$1,319,000
- East Stanley Boulevard valued at \$699,135

HSC section 34181 (a) defines governmental purpose assets that were constructed and used for a governmental purpose such as roads, school buildings, parks, police and fire stations, libraries and local agency administrative buildings. The transfers of assets listed above do not meet these criteria. Therefore, should be reversed and the properties returned to the Successor Agency.

Properties transferred as housing assets

- o 241 North M Street valued at \$400,000
- o 2121 Railroad Avenue valued at \$771,159
- o 2093 Railroad Avenue valued at \$5,472,422

These properties were transferred to the City prior to February 1, 2012; therefore, were not reviewed by Finance during Housing Asset Transfer review.

These non-liquid assets transferred to the City are 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.

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. However, the Agency is required to reverse the improper transfers of property and recover the assets from the City.

- Non-cash adjustment correction in the amount of \$157,762. The amount of \$157,762 reflects the improper transfer of property assets added to the OFA balance by the independent accountant in Attachment A of the DDR. However, an adjustment to the non-cash and cash equivalents was not made by the independent accountant. As such, Finance is making an adjustment accordingly.
- Balances retained for funding of an enforceable obligation in the amount of \$1,375,838. Agency's request to retain current unencumbered OFA balances to for future obligations is not allowed. The Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations. It is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

Should a deficit 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, 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.

Since the Agency has not met the requirements detailed in HSC section 34179.5 (c) (5) (D) and possesses alternatives to address short term cash flow shortages, Finance deems it is not necessary for Agency to retain \$1,375,838 in OFA unencumbered balances.

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 \$27,804 (see table below).

OFA Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ (281,082)
Finance Adjustments	
Unsupported balances requested for future obligations	1,375,838
Adjustment to cash for LMIHF balance	(909,190)
Non-cash adjustment correction	(157,762)
Total OFA available to be distributed:	\$ 27,804

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.

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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 Beliz Chappuie, Supervisor or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Erik Peterson, Accountant, City of Livermore
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
California State Controller's Office