DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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June 28, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated May 24, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Livermore Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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 was 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 did complete its review of your DDR and issued an OFA DDR determination letter on May 24, 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 13, 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:

- Capital assets in the amount of $13,166,107. Our initial review of Attachment A of the DDR report and other supporting documentation provided by the Agency noted the following property 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

  Properties transferred as housing assets
  - 241 North M Street valued at $400,000

- 2121 Railroad Avenue valued at $771,159
- 2093 Railroad Avenue valued at $5,472,422

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. Finance previously determined the transfers of the assets listed above as governmental use do not meet these criteria. In addition, the housing asset properties were transferred to the City prior to February 1, 2012; therefore, they were not reviewed by Finance during the Housing Asset Transfer review.

However, it is our understanding the California State Controller's Office is currently concluding a review of these asset transfers. In addition, the Oversight Board actions related to the transfer of these properties is currently under Finance's review. Therefore, the determinations on the property transfers will be addressed through our review of the OB action. To the extent it is determined the 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 any improper transfers of property and recover the assets from the City.

- The Agency's request to retain $1,375,838 in OFA balances to satisfy enforceable obligations is approved. Finance previously increased the OFA balance available for distribution by $1,375,838. During the Meet and Confer process, our review indicates that for the Recognized Obligation Payment Schedule (ROPS) period of July through December 2012 (ROPS II), Finance approved $1,817,805 and the County Auditor Controller (CAC) distributed $1,545,992 from the Redevelopment Property Tax Trust Fund (RPTTF). This distribution was included in the June 30, 2012 OFA balance and was intended for enforceable obligations for the ROPS II period. Since the Agency's requested amount to be retained is less than the amount distributed for enforceable obligations, Finance will allow the Agency to retain $1,375,838 in OFA 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.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- 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.

- 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.

The Agency's OFA balance available for distribution to the affected taxing entities is $0 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(281,082)
Finance Adjustments		
Adjustment to cash for LMIHF balance		(909,190)
Non-cash adjustment correction		(157,762)
Total OFA available to be distributed:	$	(1,348,034)

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.

Please direct inquiries to Evelyn Suess, Supervisor, or Danielle Brandon, 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