DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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April 27, 2013

Mr. Geoffrey Buchheim, Financial Services Manager
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025

Dear Mr. Bucheheim:

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 March 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Menlo Park Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 15, 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 March 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 April 10, 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:

- Balances requested to be retained totaling $7,588,966 for fiscal year 2012-13 and future obligations should be decreased by $3,320,010 ($1,768,001 + $3,092,665 - $1,540,656), as further discussed below:

    - The Agency's request to retain $4,496,301 for July through December 2012 Recognized Obligation Payment Schedule (ROPS II) obligations is partially denied. Finance approved and the County Auditor Controller (CAC) distributed $2,728,300 from the Redevelopment Property Tax Trust Fund (RPTTF) on June 1, 2012. The Agency may retain the $2,728,300. As such, the OFA balance available for distribution to the taxing entities will be increased by $1,768,001.

      Finance notes the Agency reported actual expenditures of $398,150 paid with reserves for the ROPS II period; however, the Agency did not request and Finance did not approve the use of reserves for the ROPS II period. HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. The amounts approved by Finance were based on the ROPS II form submitted May 1, 2012 and not the submitted August 2012 revised ROPS II form. To the extent these expenditures constitute enforceable obligations, the Agency should request funding for these in a future ROPS period.

- The Agency requested to retain $3,092,655 for the January through June 2013 Recognized Obligation Payment Schedule (ROPS III) period. Finance approved and the CAC distributed $3,092,655 from the RPTTF on January 2, 2013, after the June 30, 2012 OFA balances delineated in the DDR. Therefore, it is inappropriate for the Agency to retain current OFA balances for obligations that have already been funded through a separate process. As such, the OFA balances available for distribution to the taxing entities will be increased by $3,092,655.

- During the Meet and Confer process, the Agency stated that the County Auditor Controller has anticipated there will be insufficient funds available from the RPTTF to cover approved enforceable obligations for the July through December 2013 Recognized Obligation Payment Schedule (ROPS 13-14A) period. Finance approved $3,201,389 in enforceable obligations and the County Auditor Controller estimates $1,660,733 will be available from the RPTTF, which results in a shortfall of $1,540,656. Therefore, the Agency may retain $1,540,656 to cover enforceable obligations in the ROPS 13-14A period.

  Should any further 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.

- During the Meet and Confer process, the Agency identified an error in the DDR related to bond proceeds and reserves not being restricted. However, based on further review, the bond proceeds and reserves were also not included in the beginning balance. Therefore, the $4,381,051 should be added to the beginning balance in Procedure 5 as restricted cash and investments and restricted in Procedure 6 as a legally restricted asset.

The Agency's OFA balance available for distribution to the affected taxing entities is $16,489,377 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	13,169,367
Finance Adjustments		
Add:		
Request to retain balance not supported:		3,320,010
Total OFA available to be distributed:	$	16,489,377

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

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Margaret Roberts, City Clerk, City of Menlo Park
Mr. Bob Adler, Controller, San Mateo County
California State Controller's Office