



November 22, 2013

Ms. Emma Karlen, Finance Director
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

Dear Ms. Karlen:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) Other Funds and Accounts (OFA) Due Diligence Review (DDR) Meet and Confer determination letter dated May 2, 2013. A revision is necessary to account for additional unencumbered OFA balances that should be remitted to the county auditor-controller for distribution to the taxing entities. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Milpitas 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.

With additional information, Finance has determined that pursuant to a loan agreement between the City and former redevelopment agency (RDA), the former RDA transferred \$2,000,000 to the City of Milpitas (City) on June 30, 2011. However, HSC section 34171 (d) (2) states that agreements between the former RDA and the city that created the RDA are not enforceable obligations. Therefore, pursuant to HSC section 34179.5 (c) (2), this transfer, which was not pursuant to an enforceable obligation, should have been included in the OFA DDR's beginning balance as of June 30, 2012. Therefore, Finance is adjusting the OFA DDR remittance amount by \$2,000,000, bringing the balance to \$40,875,908 (\$38,875,908 + \$2,000,000) plus interest earned since funds were transferred. If the Agency disagrees with this new adjustment it may request a meet and confer session related to this adjustment 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/

In addition, on January 31, 2012, the Agency made a similar transfer in the amount of \$3,600,000 to the City. As described above, Finance does not believe this is an allowable transfer and this amount should have been included in the OFA DDR as unencumbered and available for distribution to the taxing entities. However, as the Agency requested this \$3,600,000 loan repayment on the January 1, 2012 through June 30, 2012 Recognized Obligation Payment Schedule (ROPS I), and Finance did not review the item, Finance is not adjusting the OFA DDR remittance for this amount, but recognizes this payment is not considered an enforceable obligation. As such, Finance will not seek action for this unallowable transfer.

Based on a previous review of additional information and documentation provided to Finance during the Meet and Confer process, Finance continues to maintain its position as stated in our May 2, 2013 OFA DDR Meet and Confer determination letter. Specifically, Finance notes the following for the items previously disputed by the Agency:

- The Agency contends the interfund advances from the former Redevelopment Agency (RDA) to the City should be considered long-term receivables and not as callable on demand as determined by the preparer of the DDR. However, Joint Resolution No. RA327/7852 of the City and the former RDA provided by the Agency states that the advances "shall be payable on demand within thirty (30) days after demand is made." HSC section 34179.5 (b) (1) defines "cash" and "cash equivalents" to include payables on demand. Since a demand for payment can be made on the advances, they will be considered payable on demand. Therefore, no adjustment to the DDR is necessary.
- The Agency contends the former RDA had transferred various assets, including cash and properties, to the Milpitas Economic Development Corporation (MEDC), a separate legal entity from the City, pursuant to a March 2011 Operating Agreement. The MEDC subsequently entered into contracts and expended funds on behalf of the former RDA.

HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. 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. 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. The MEDC is included in the City's CAFR and is controlled by the City. Even though the MEDC 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 March 2011 Operating Agreement is considered to be an agreement between the City and the former RDA and is not an enforceable obligation. As such, no changes to the DDR are necessary.

Agency obligations paid without having been listed on an Enforceable Obligation Payment Schedule (EOPS) or ROPS are not permitted. Only obligations approved on an EOPS or ROPS were authorized for payment during these periods. To the extent any items paid for by the MEDC are enforceable obligations, the Agency should place these items on a future ROPS, at which time they are subject to review and approval from the Agency's oversight board and Finance.

- The Agency contends that one property transferred to the City is a housing asset that was listed on the Housing Asset Transfer form and Finance did not object to the transfer. However, the California State Controller's Office (Controller) determined that the transfer was inappropriate during their audit of asset transfers and ordered the property be returned to the Agency. Pursuant to HSC section 34167.5, the Controller is tasked with determining whether assets were transferred from the former RDA to the City and shall order the assets to be returned to the Agency. Therefore, Finance continues to make no changes to the DDR.

Based on the foregoing, the Agency's OFA balance available for distribution to the affected taxing entities is being revised to \$40,875,908 plus any interest earned. 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 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 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.

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 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.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Assistant Program Budget Manager

cc: Ms. Jane Corpus Takahashi, Finance Manager, City of Milpitas
Ms. Irene Lui, Controller-Treasurer, Santa Clara County
Mr. Vinod Sharma, Director of Finance Agency, Santa Clara County
California State Controller's Office