DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 18, 2013

Mr. Donald Parker, Finance Director
City of Montclair
5111 Benito Street
Montclair, CA 91763

Dear Mr. Parker

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 19, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Montclair (Agency) submitted an oversight board approved OFA DDR to Finance on January 10, 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 19, 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 March 26, 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:

- The Agency requested to retain $2,509,706 for bond debt service payments. Finance previously increased the OFA balance by this amount. Our review indicated the fiscal agent used bond reserve funds to make bond debt service payments on the Agency's behalf prior to the Agency's receipt of Redevelopment Property Tax Trust Funds (RPTTF). The Agency provided documentation that upon receipt of RPTTF totaling $2,454,049 for the July through December 2012 Recognized Obligation Payment Schedule (ROPS II) period, the Agency repaid the bond reserve fund a total of $2,509,706. We note the Agency only reported it expended $2,454,049 on the Prior Period Adjustment Worksheet of the July through December 2013 Recognized Obligation Payment Schedule (ROPS 1314A) period; however, because the additional funds were used to make bond debt service payments, the full $2,509,706 will be permitted to be retained.

- The Agency requested to retain $339,845 for items listed on its January through June 2013 Recognized Obligation Payment Schedules (ROPS III) period. This amount includes $193,235 to provide for an administrative reserve and $146,610 for items listed on the ROPS III using reserve funds. Our review indicates the Agency received sufficient RPTTF to pay for all items approved for RPTTF funding; therefore, the retention of $193,235 is not permitted. As related to the $146,610 in approved ROPS

III items for funding out of reserves, the Agency will be permitted to retain these funds. Therefore, the balance available for distribution will be increased by $193,235.

- The Agency requested to retain $1,729,726 to meet approved administration and enforceable obligations. Our review indicated for the ROPS II period, Finance approved $11,403,685 from the Redevelopment Property Tax Trust Fund. The Agency received a distribution of $2,454,049 on June 20, 2012 for the ROPS II period which was therefore included in the June 30, 2012 balance. Per HSC section 34179.5 (c), an Agency is permitted to retain balances that are needed to satisfy those items on the ROPS schedule for the current fiscal year. Therefore, because the Agency did not receive the entire approved amount for the ROPS II period, the Agency will be permitted to retain $370,083 in reserve funds used to pay for unfunded Finance approved enforceable obligations in ROPS II (as reported on ROPS 13-14A). Therefore, the balance available for distribution is increased by $1,359,643 ($1,729,726 - $370,083), which is the difference between the amount requested to be retained and ROPS II actual expenditures on Finance approved obligations.

  Finance notes that 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. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

  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's OFA balance available for distribution to the affected taxing entities is $7,876,440 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	6,323,562
Finance Adjustments		
Add:		
Requested retained balances not supported	$	1,552,878
Total OFA available to be distributed:	$	7,876,440

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: Ms. Marilyn Staats, Deputy City Manager, City of Montclair
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office