DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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April 22, 2013

Ms. Francesca Schuyler, Director of Finance
City of Montebello
1600 West Beverly Boulevard
Montebello, CA 90640-3932

Dear Ms. Schuyler:

Subject: Other Funds and Accounts Due Diligence Review

The City of Montebello 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 February 7, 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 transfers in the amount of $3.1 million. The Agency transferred $2.8 million to the City and $356,780 to a third party per the 2000 Certificate of Participation Agreement between the City and the RDA. Previously, Finance denied the agreement as an enforceable obligation in our letters dated May 18, 2012, October 20, 2012, and December 18, 2012. However, Finance no longer objects to the agreement based on our Meet and Confer determination letter dated December 27, 2012. Therefore, the $3.1 million is an allowable transfer.

  In addition, cash transfers to the City of Montebello (City) in the amount of $7.4 million per Reimbursement Agreements between the City and the former redevelopment agency (RDA) for administration and employee expenses is not allowed. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. Therefore, the Reimbursement Agreements are not enforceable and the OFA available for distribution to the taxing entities will be adjusted by $7.4 million.

- Balances requested to be retained for fiscal year 2012-13 obligations in the amount of $8.5 million are partially denied. Included in this amount is $4.6 million of July through December 2012 Recognized Obligation Payment Schedule (ROPS II) and $3.9 million of January through June 2013 ROPS III expenditures that were approved with Redevelopment Property Tax Trust Fund (RPTTF) funding. Although Finance approved $4.6 million for ROPS II, the County Auditor Controller distributed only $3.6 million therefore; the Agency is limited to retaining $3.6 million for ROPS II obligations. As such, the OFA balance available for distribution will be adjusted by $1 million.

  Further, since the County Auditor Controller distributed RPTTF for approved ROPS III obligations on January 2, 2013, after the June 30, 2012 OFA balances delineated in the DDR, it is inappropriate for the Agency to retain current OFA balances for obligations that have already been funded through a separate process. Therefore, the OFA balances available for distribution to the taxing entities will be adjusted by an additional $3.9 million, totaling $4.9 million.

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 $7,311,306 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(1,882,919)
Finance Adjustments		
Add:		
Allowed transfers:		(3,135,847)
Disallowed transfers:	$	7,424,210
Requested retained balance not supported:		4,905,862
Total OFA available to be distributed:	$	7,311,306

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, 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 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 Kylie Le, Supervisor or Brian Dunham, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Michael Huntley, Director of Planning, City of Montebello
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office