



May 29, 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

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated April 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Montebello 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 April 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 May 21, 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:

- Cash transfers in the amount of \$3,135,847 (\$2,779,067 + \$356,780). The Agency provided documentation supporting transfers of \$2,779,067 to the City and \$356,780 to a third party were consistent with the 2000 Certificate of Participation Agreement between the City and the RDA. Finance previously denied the agreement as an enforceable obligation in our letters dated May 18, 2012, October 20, 2012, and December 18, 2012. However, based on our determination letter dated December 27, 2012, Finance no longer objects to the agreement. Therefore, the \$3,135,847 is an allowable transfer and the OFA balance available for distribution will be decreased by \$3,135,847.
- Transfers to the City of Montebello (City) totaling \$7,424,210 are partially denied. The Agency contends the transfers are enforceable because \$1,790,406 of the transfers were payments of the 2000 Certificate of Participation (COP) Agreement between the City and the RDA. The Agency also stated that the remaining \$5,633,804 of the transferred funds were payments for services, employees, and facilities of the Agency that had been advanced by the City. Based on review of the documents provided by the Agency during the Meet and Confer process, the funds to be distributed will be increased by \$5,634,173 (\$7,424,210 - \$1,790,037), as discussed on the following page:

- The Agency provided sufficient supporting documentation establishing two wire transfers for the 2000 COP. These included a transfer of \$1,411,376 on October 14, 2010 and a transfer of \$378,661 on April 14, 2011. In our letter dated December 27, 2012, Finance concluded the 2000 COP is an enforceable obligation. Therefore, these two transfers are allowable pursuant HSC section 34179.5. However, this amount was not included in the original OFA DDR and as such, no adjustment to the OFA balance available for distribution is needed.
- The Agency provided additional documentation regarding cash transfers to the City in the amount of \$5,634,173; however, Finance continues to deny these transfers. The Agency claims the amount transferred to the City includes payments for services, employees, and facilities of the Agency that had been advanced by the City pursuant to agreements between the City and the Agency. In accordance with HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA, and indebtedness obligations as defined in subdivision (e) 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. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by \$5,634,173.
- The Agency requested to retain \$8,475,185 to cover enforceable obligations. Based on further review during the Meet and Confer process, the Agency may retain \$4,792,047 (\$3,738,211 + \$1,053,836), as further discussed below. Accordingly, the OFA balance available will be increased by \$3,683,138 (\$8,475,185 - \$4,792,047).
  - For the ROPS II period, Finance approved \$3,738,211 and the County Auditor Controller (CAC) distributed \$3,568,963 from the Redevelopment Property Tax Trust Fund (RPTTF). The Agency spent \$5,276,783 during the ROPS II period; however, since Finance only approved \$3,738,211, the Agency will be permitted to retain only the amounts actually expended up to the total amount approved by Finance or \$3,738,211.
  - For the July through December 2013 ROPS period (ROPS 13-14A), the County Auditor Controller made a prior period adjustment of \$1,053,836 for the July through December 2012 ROPS period pursuant to HSC section 34186 (a). This adjustment assumes the funds are available for the ROPS 13-14A period; therefore, the Agency will be permitted to retain \$1,053,836.
  - The Agency will not be permitted to retain the remaining \$3,683,138 as this amount is not supported by enforceable obligations.

Should 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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$4,298,545 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (1,882,919)
Finance Adjustments	
Add:	
Allowed transfers:	(3,135,847)
Disallowed transfers:	\$ 5,634,173
Requested retained balance not supported:	3,683,138
<b>Total OFA available to be distributed:</b>	<b>\$ 4,298,545</b>

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.

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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, Dispute Resolution Supervisor, or Derk Symons, 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