



August 2, 2013

Ms. Julie Porter, Assistant Finance Director
City of Monterey
735 Pacific Street
Monterey, CA 93940

Dear Mr. Rhoads:

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 June 26, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Monterey Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on April 11, 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 was not bound to complete its review and make a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on June 26, 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 July 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:

- Finance previously increased the transfers reported in the Agency's OFA DDR by \$306,773. This adjustment was made to account for the difference between the amount identified in the California State Controller's Asset Transfer Review report issued May 2013 and the Agency's OFA DDR reported amount (\$7,662,258 - \$7,355,485). The Agency claims and provided documentation supporting this amount was part of the December 2011 tax increment distribution that has been accounted for in the Low and Moderate Income Housing Fund (LMIHF) DDR. Further, the amount was not transferred but rather shifted within the LMIHF accounts. In addition, the Agency claims and provided documentation supporting that the funds were drawn from the LMIHF to make the True Up demand. The Agency remitted the True Up payment on July 27, 2012. Therefore, Finance no longer believes the increase of \$306,773 to the OFA DDR is necessary.
- The Agency's request to retain \$268,672 was previously not allowed because the amount represents related administrative costs that had been paid through June 30, 2012 and the obligation is no longer outstanding. However, the Agency claims this amount is not a

request to retain funds, but rather a presentation within the OFA DDR to account for the County Auditor Controller's (CAC) offset of Finance approved administrative costs allowance for the January through June 2012 period. Our review indicates that the Agency received a \$3,492,484 distribution from the CAC in December 2011. After Finance's Recognized Obligation Payment Schedule (ROPS) determination letter for the January through June 2012 period (ROPS I) approving \$268,672 in enforceable obligations, the CAC required the Agency to remit \$3,223,812 (the difference between the distribution and the approved amount or \$3,492,484 - \$268,672). Therefore, Finance concurs with the Agency that this is not a request to retain funds, rather a restriction of funds for an enforceable obligation, and no adjustment to the OFA balance is needed.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to \$4,441,141 as reported on the DDR.

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.

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Please direct inquiries to Evelyn Sues, Dispute Resolution Supervisor, or Danielle Brandon, Analyst, at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Rick Marvin, Housing & Property Manager, City of Monterey
Ms. Julie Aguero, Auditor Controller Analyst II, Monterey County
California State Controller's Office