



May 5, 2013

Mr. Mark Evanoff, Redevelopment Manager
City of Union City
34009 Alvarado-Niles Road
Union City, CA 94587

Dear Mr. Evanoff:

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 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Union City 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 1, 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 April 23, 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:

- Unallowable transfers of assets to the City of Union City (City) after January 1, 2011. The Agency transferred assets totaling \$72,850,930 pursuant to a Disposition and Development Agreement (DDA) dated February 22, 2011, and a Public Improvement Agreement (PIA) dated March 8, 2011, as noted in Exhibit 2 of the OFA DDR. Both of these agreements were between the City and former redevelopment agency (RDA). HSC section 34171 (d) (2) states that agreements between the former RDA and the City which created the former RDA are not enforceable obligations. Therefore, the former RDA was not permitted to transfer assets to the City.

The DDR also indicated that the City returned \$62,722,518 of the assets to the Agency as of June 30, 2012, which consisted of the entire amount of Land Held for Resale pursuant to the DDA, and a portion of the assets transferred pursuant to the PIA. The difference between the transferred and returned amounts is \$10,128,412 (\$72,850,930 - \$62,722,518). The DDR noted that the City retained this amount plus revenues generated by their Economic Development Fund of \$354,591 to pay for expenditures of various projects.

The amount of \$10,128,412, retained by the City, was not completely obligated to third parties. Our review noted that the City expended a combination of 2010 and 2011 Tax

Allocation Bond (TAB) proceeds on the following projects for a total of \$2,081,484, which are not supported by an enforceable obligation and have been denied on all Recognized Obligations Payment Schedule (ROPS) reviews:

- o Construction of East Plaza and Loop Road in the amount of \$1,048,594
- o Construction of Promenade and Playground in the amount of \$930,339
- o Construction of East West Connector in the amount of \$95,888
- o Survey Work for Bart Phase 2 in the amount of \$6,663

However, for DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the \$2,081,484 of bond proceeds.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010, for the purposes for which the bonds were issued. Successor agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010. Finance notes that the disallowed amount included \$1,748,763 in 2011 Tax Allocation Bond proceeds.

Finance made no adjustments to the OFA balance available for allocation to the affected taxing entities. As a result, there are no unencumbered OFA balances available for distribution.

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: Mr. Tony Acosta, Deputy City Manager
Ms. Carol S. Orth, Tax Analysis Division Chief, Alameda County Auditor-Controller
California State Controller's Office