DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR
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April 1, 2013

Mr. Eddie Manfro, Interim City Manager
City of Westminster
8200 Westminster Boulevard
Westminster, CA 92683

Dear Mr. Manfro:

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Westminster 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 January 14, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Pursuant to HSC section 34179.6 (d), 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:

- Total assets held as of June 30, 2012 have been adjusted by $2,371,904. As noted in the DDR, prepared on a modified accrual basis, funds in the cash account were used to pay for a bond funded project, and the reimbursement of the cash account was not reflected in the cash balance presented in the DDR.

- Transfers totaling $25,582 are not allowed. The transfer to the City of Westminster (City) in the amount of $20,000 for the Retail Property Trust agreement is denied; the contracts that established the obligation were between the City and Retail Property Trust Although an amended contract was later provided that indicates the former redevelopment agency (RDA) was a party to the contract, it still states that the City is responsible for payment of the contract.

  Additionally, the Agency transferred $5,582 to the City to cover costs for the Rose Center repairs. The Agency did not provide sufficient documentation to support this transfer; additionally, per HSC 34171 (d) (2); agreements, contracts, or arrangements between the city, county, or city and county that created the former RDA and the RDA are not enforceable.

- Transfers of Land, Other Real Property, Improvements, Fixtures, and Equipment totaling $45,036,421 to the City are not allowed. The Agency transferred properties and other assets improperly to the City during the period March 2011 through June 2012.

  Improper transfers should be reversed, and the Agency should recover the properties and other real assets from the recipients. The Agency should further describe the planned disposition of the property in its long-range property management plan as required by HSC section 34191.5. For DDR purposes, however, these disallowed transfers will not affect the balance available for distribution to the affected taxing entities.

- The request to retain funding in the amount of $26,276,789 for enforceable obligations for the period July through December 2012 has been adjusted by $15,008,069. The Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations.

  It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

  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), 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.

We note the Agency requested retention of bond proceeds issued June 1, 2011. 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.

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 $31,698,961 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	14,293,406
Finance Adjustments		
Add:		
Disallowed transfers	$	25,582
Adjustment to the June 30, 2012 balance		2,371,904
Requested retained balance not supported		15,008,069
Total OFA available to be distributed:	$	31,698,961

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 Nichelle Thomas, Supervisor or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Robin Roberts, City Clerk, City of Westminster
Mr. Frank Davies, Property Tax Manager, Orange County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office