



May 5, 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

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 Westminster Successor Agency (Agency) submitted an oversight board approved OFA DDR to 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. 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:

- Transfers of Land, Other Real Property, Improvements, Fixtures, and Equipment totaling \$45,036,421 to the City of Westminster (City). The Agency transferred properties and other assets to the City during the period March 2011 through June 2012. For DDR purposes, however, these disallowed transfers will not affect the balance available for distribution to the affected taxing entities.

These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

- The Agency requested to retain funding in the amount of \$26,276,789 for enforceable obligations for the period July through December 2012. Based on further review during the Meet and Confer process, the Agency may retain \$13,797,661 (\$13,669,937 + \$127,724), as discussed below. Accordingly, the OFA balances available will be increased by \$12,479,128 (\$26,276,789 - \$13,797,661).

On the Recognized Obligation Payment Schedule (ROPS) for the July through December 2012 (ROPS II) period, Finance approved \$13,860,431 and the County Auditor Controller (CAC) distributed \$0 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS (ROPS 13-14A) form, the Agency reported actual expenditures totaling \$8,143,573 under RPTTF, \$5,425,630 under Reserves, and \$237,871 under administrative costs. Finance's May 6, 2012 letter states that Items 7, 9, and 16 are considered administrative costs. Administrative costs are capped at three percent, which was determined to be \$382,099. Additionally, in Finance's May 6, 2012 letter, Items 35 and 36 were denied and Item 51 was not listed in the approved ROPS form. Therefore, any costs paid on these items were not allowed. The allowed amount for enforceable obligations is \$13,669,937 (\$8,143,573 (RPTTF) + \$5,425,630 (Reserves) + \$382,099 (Admin) - \$80,517 (Item 9 admin) - \$102,116 (Item 16 admin) - \$10,579 (Item 35) - \$86,186 (Item 36) - \$1,967 (Item 51)). Therefore, the Agency may retain \$13,669,937 (\$382,099 + \$13,287,838) for the ROPS II period.

For the January through June 2013 ROPS (ROPS III) period, Finance approved \$15,387,638 and the CAC distributed \$15,259,914 from the RPTTF. The CAC made a \$127,724 adjustment for the January through June 2012 ROPS (ROPS I) period on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). Therefore, the Agency may retain \$127,724 to ensure sufficient funds are available for the ROPS III period.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustment is appropriate:

- 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 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; 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.

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.

The Agency's OFA balance available for distribution to the affected taxing entities is \$29,170,020 (see table on following page).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
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	12,479,128
<b>Total OFA available to be distributed:</b>	<b>\$ 29,170,020</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.

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 Suess, Supervisor, or Mary Halterman, 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  
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