DEPARTMENT OF FINANCE

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April 19, 2013

Mr. Art Gallucci, City Manager
City of Cerritos
P.O. Box 3130
Cerritos, CA 90703

Dear Mr. Gallucci:

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 March 13, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Cerritos (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 March 13, 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 March 28, 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 transferred in the amount of $8.6 million from the Fiduciary Funds to the Housing Assets Special Revenue Fund. The Agency claims this amount was part of the total $10.1 million already remitted to the County Auditor-Controller on December 19, 2012 following Finance's Low and Moderate Income Housing Fund (LMIHF) DDR Meet and Confer determination. Our review indicates this is the case. Therefore, no adjustment to the available balance is needed.

- During our review of the above item, the Agency provided page 54 of the Comprehensive Annual Finance Report (CAFR), which includes notes 5 and 6, to explain its position regarding the $8.7 million (specifically referenced in note 5). While reviewing note 5 of the CAFR, it came to our attention that the Agency remitted payment to the City in the amount of $11,117,324 for principal and interest on a loan between the City and the former RDA. However, the transfer was not included in the DDR.

  During the Meet and Confer, Finance requested clarification of this item. The Agency stated that the item is related to the $10.1 million dollar item noted above that had been remitted to the county auditor-controller. However, Finance's review indicates this is a separate item. Upon requesting further explanation from the Agency, Finance was instead referred to the Agency's legal counsel. The Agency's attorney reiterated that

this item was, as stated in note 5, a transfer to the City for loan principle and interest. Per 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. This was a transfer from the Agency to the City not evidenced by an enforceable obligation and is not authorized. Therefore, the OFA balance available for distribution will be increased $11,117,324.

The Agency's attorney questioned Finance's ability to disallow this item. For clarification, Finance provides that the purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Based on new information discovered during the Meet and Confer, Finance's adjustment to the OFA balance is appropriate and necessary.

In addition, Finance will be providing the information to the California State Controller's Office (Controller). Finance will work diligently with the Controller to identify any other disallowed transfers between the former redevelopment agency and the City in accordance with HSC section 34178.8.

- The request to retain OFA balances for fiscal year 2012-13 in the amount of $15,508,110 is partially denied. Although Finance approved $15.6 million for other obligations during the July through December 2012 ROPS II period, the County Auditor-Controller distributed $14,311,679 million on June 1, 2012. Per the prior period payment tab of the July through December 2013 Recognized Obligation Payment Schedule (ROPS 13-14A), the Agency expended the entire $14,311,679 of distributed RPTTF and $225,756 in reserve funds to meet approved ROPS III approved obligations. The Agency is limited to retaining up to the amount of RPTTF distributed or, if RPTTF was insufficient, any actual reserve funds expended on approved enforceable obligations. Therefore, the Agency will be permitted to retain $14,537,435. The OFA balance available for distribution will be increased by the $970,675.

  Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the Recognized Obligation Payment Schedule (ROPS). In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

  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), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, 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 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:

- Cash and cash equivalent balance as of June 30, 2012 includes a fair market value adjustment in the amount of $17,455. The DDR, Exhibit C requests to restrict this balance and considers it non cash and cash equivalent. However, per discussion with Agency staff the assets listed on Exhibit C does not have a fair market value. Further, supporting documents was not provided to demonstrate the need to retain this balance. As such, the OFA balance available for distribution to the taxing entities will be adjusted by $17,455.

The Agency's OFA balance available for distribution to the affected taxing entities is $10,843,383 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(1,262,071)
Finance Adjustments		
Add:		
Disallowed transfers:	$	11,117,324
Adjustment to the June 30, 2012 balance:		17,455
Requested retained balance not supported:		970,675
Total OFA available to be distributed:	$	10,843,383

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 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: Ms. Denise Manoogian, Director of Administrative Services, City of Cerritos
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office