DEPARTMENT OF FINANCE
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April 24, 2012

Mr. Vilko Domic, Director of Finance
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Dear Mr. Domic:

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 18, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Commerce 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 March 18, 2012. 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 8, 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:

- Assets that are not cash or cash equivalent related to the Mixmaster project totaling $7,683,696 were disallowed. Under procedure 7, the CPA firm correctly adjusted $5,464,167 for the net book value of this project. Therefore, Finance is reversing its adjustment of $7,683,696.

- The Agency's request to retain $9,784,857 in current unencumbered OFA balances to cover enforceable obligations is partially denied. The Agency may retain $9,060,697 ($7,805,137 + $200,000 + $1,055,560) to cover enforceable obligations, as further discussed below.

  For the July through December 2012 Recognized Obligation Payment Schedule (ROPS) period (ROPS II), Finance approved $8,860,691 and the County Auditor Controller (CAC) distributed $5,775,849 from the Redevelopment Property Tax Trust Fund (RPTTF). This resulted in a shortfall of $3,084,842 for the ROPS II period. For the July through December 2013 period (ROPS 13-14A), the Agency reported actual expenditures during the ROPS II period of $7,563,716 for approved enforceable obligations and administrative costs. This resulted in $1,787,867 in expenditures from the OFA balances to cover the shortfall. Additionally, Finance approved $241,421 to be expended from OFA balances for the ROPS II period. Therefore, the Agency may retain $7,805,137 ($7,563,716 + $241,421) for the ROPS II period.

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 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.

For the January through June 2013 ROPS period (ROPS III), Finance approved and the CAC distributed $4,682,854 from RPTTF. The CAC did not make any adjustments for the January through June 2012 period (ROPS I) in the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process. However, Finance also approved $200,000 to be expended from OFA balances for the ROPS III period. Therefore, the Agency may retain $200,000 for the ROPS III period.

For the ROPS 13-14A, the Agency is requesting $7,611,183 for obligations and $240,404 for administrative costs from RPTTF. The CAC estimates that $6,796,027 will be available to the Agency from RPTTF. This results in an estimated shortfall of $1,055,560. Therefore, the Agency may retain $1,055,560 for the anticipated shortfall in the ROPS 13-14A period.

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 Recognized Obligation Payment Schedule (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's OFA balance available for distribution to the affected taxing entities is $335,784 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(388,376)
Finance Adjustments		
Add:		
Requested retained balance not supported:		724,160
Total OFA available to be distributed:	$	335,784

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 Mary Halterman, Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Kristina Burns, Manager, Los Angeles County Auditor-Controller's Office
California State Controller's Office