DEPARTMENT OF FINANCE

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May 4, 2013

Ms. Ramona Castañeda, Fiscal Services Manager
City of Fullerton
303 West Commonwealth Avenue
Fullerton, CA 92832

Dear Ms. Castañeda:

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 29, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Fullerton (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 March 29, 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 17, 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:

- A transfer in the amount of $980,364 to the City is not allowed. The Agency transferred cash to the City Capital Project Fund without obtaining prior approval on a Recognized Obligation Payment Schedule (ROPS). The Agency claims these funds were derived from the sale of an easement and the proceeds from that sale are restricted for a specific purpose per a 2009 agreement. The documentation provided did not adequately support these funds are restricted for a specific purpose. In addition, if the former Redevelopment Agency (RDA) is the contracting party, the use of these funds should have been listed on a ROPS.

  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. Therefore, this transfer was not made pursuant to an enforceable obligation. The OFA balance available for distribution will be increased by $980,364.

- The request to retain funds in the amount of $2,760,858 for the funding of enforceable obligations is allowed. The Agency provided adequate documentation that these funds were needed to satisfy bond debt service payments for the July through December 2012 ROPS (ROPS II) period. Therefore, no adjustment to the OFA balance available for distribution is needed.

  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.

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:

- Our review indicates the total cash and investments held as of June 30, 2012 should be $20,953,433. This amount is listed in the DDR and is less than the amount listed on the Trial Balance. As such, the balance as of June 30, 2012 has been adjusted by $289,627.

- Payments transferred to the City of Fullerton (City) totaling $22,261,722 are not allowed. This includes transfers for the Library Expansion project in the amount of $4,983,856, and transfers for the Community Center Construction Contract totaling $17,277,866. The former redevelopment agency (RDA) was not a party to these contracts. The transfers were not made pursuant to an enforceable obligation and are therefore, not allowed. For DDR purposes, however, these disallowed transfers will not affect the amount available for distribution to the affected taxing entities as the Agency transferred 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. The bond proceeds requested for use were issued in February 2011

The Agency's OFA balance available for distribution to the affected taxing entities is $14,201,762 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	12,931,771
Finance Adjustments		
Add:		
Adjustment to the June 30, 2012 balance		289,627
Disallowed transfers		980,364
Total OFA available to be distributed:	$	14,201,762

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. Charles Kovac, Project Manager, City of Fullerton
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office