DEPARTMENT OF FINANCE

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April 26, 2013

Mr. Chuck Dantuono, Director of Administrative Services
City of Highland
27215 Base Line
Highland, CA 92346

Dear Mr. Dantuono:

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 22, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Highland Successor Agency (Agency) submitted an oversight board approved OFA DDR Finance on November 1, 2012. 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 22, 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 5, 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:

- Our review indicates that $2,365,516 was transferred to the City of Highland (City) for principal and interest on a loan between and the City and the Agency. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. This loan was issued after the first two years of the former RDA's creation. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted. The balance available for distribution will be increased by $2,365,516.

  The repayment of this loan may become an enforceable obligation after the Agency receives a Finding of Completion from Finance. If the oversight board makes a finding that the loans were for legitimate redevelopment purposes, these loans should be placed on future Recognized Obligation Payment Schedules (ROPS) for repayment. Refer to HSC section 34191.4 (b) for more guidance.

- The request to retain funds to satisfy enforceable obligations for the fiscal year 2012-13 in the amount of $2,118,896 is allowed. Our review indicates the Agency did not receive all approved Redevelopment Property Tax Trust Funds (RPTTF) for the January through

June 2013 period (ROPS III). Per HSC section 34179.5, (c) (5), the Agency is permitted to retain funds to satisfy obligations places on a Recognized Obligation Payment Schedule (ROPS) for the current fiscal year; therefore, the Agency may retain these funds and no adjustment to the OFA balance available for distribution is warranted.

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.

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:

- Our review indicates the total amount of assets held as of June 30, 2012 should be $46,324,923; the Agency remitted $995,246 of the reported balance to the county auditor controller as a result of a reporting error during the Low and Moderate Income Housing Fund Due Diligence Review. As such, the total amount of assets held as of June 30, 2012 has been decreased by $995,246.

- The request to retain $2,755,569 to meet debt service payments is not allowed. HSC section 34183 (a) (2) (A) requires agencies to first apply RPTTF to debt service payments. Our records indicate the Agency received a $2,755,569 RPTTF distribution in January 2013. Therefore, this amount should be applied first to meet the debt service payments.

The Agency's OFA balance available for distribution to the affected taxing entities is $10,738,150 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	6,612,311
Finance Adjustments		
Add:		
Adjustment to the June 30, 2012 balance	$	(995,246)
Disallowed transfers		2,365,516
Requested retained balances not allowed		2,755,569
Total OFA available to be distributed:	$	10,738,150

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: Ms. Terry Rhodes, Senior Accountant, City of Highland
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office