DEPARTMENT OF FINANCE

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April 8, 2013

Mr. Thomas C. Marston, Director of Finance
City of San Gabriel
425 S. Mission Drive
San Gabriel, CA 91776

Dear Mr. Marston:

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 San Gabriel Successor Agency (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 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:

- The Agency's request to retain $4,277,578 as assets legally restricted was denied in our previous determination. It was our understanding that the amount is related to a cooperative agreement between the City of San Gabriel (City) and the former Redevelopment Agency (RDA) and was denied in our January through June 2013 Recognized Obligation Payment Schedule (ROPS III) letter dated December 18, 2012, and continues to be denied as a result of the ROPS III Meet and Confer process.

  However, during the OFA DDR Meet and Confer process, the Agency provided additional documentation to show that $2,992,633 was a loan made by the City to the Agency as part of ROPS III. These funds were not the assets of the former RDA and should not have been included in the OFA beginning balance. Therefore, an adjustment needs to be made to the beginning cash balance. The remaining amount of $1,284,945 transferred by the former RDA to the City is related to the denied loan noted above. As such, OFA balances available for distribution to the taxing entities will be increased by $1,284,945 ($4,277,578 - $2,992,633).

- Balances requested to be retained for fiscal year 2012-13 in the amount of $2,292,520 is partially denied. Included in this amount is $95,508 in developer's deposits to be returned, $277,212 received for the July through December 2012 Recognized Obligation

Payment Schedule (ROPS II) period, and $1,919,800 of ROPS III expenditures that were approved with Redevelopment Property Tax Trust Fund (RPTTF) funding. The County Auditor Controller distributed $315,442 from the RPTTF for approved ROPS III obligations on January 2, 2013, leaving a shortfall of $1,604,358. The Agency may retain the $95,508 of developer's deposits, $277,212 for ROPS II obligations, and $1,604,358 to cover the shortfall for ROPS III obligations. Therefore, the OFA balances available for distribution to the taxing entities will be increased by $315,442 ($2,292,520 - $95,508 - $277,212 - $1,604,358).

As related to the $1.6 million in ROPS III RPTTF shortage, 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.

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 the adjustment continues to be appropriate for the following reasons:

- The Agency's request to retain $56,677 in current unencumbered OFA balances to cover future obligations is not allowed. Since Finance has only approved funding through the January through June 2013 ROPS III period, the Agency's fund balances are only encumbered to the extent they have been approved on a ROPS through the June 30, 2013 period. The cash flow analysis provided by the Agency does not demonstrate an immediate need to retain these unencumbered OFA balances, nor does it suggest available funding will be insufficient to service the Agency's bond debt.

  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.

  Since the Agency has not demonstrated an immediate need to retain unencumbered OFA balances and possesses alternatives to address short term cash flow shortages, Finance deems it is not necessary for the Agency to retain $56,677 in OFA unencumbered balances.

The Agency's OFA balance available for distribution to the affected taxing entities is $0 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(4,544,671)
Finance Adjustments		
Add:		
Denied ROPS item:	$	1,284,945
Requested restricted balance not supported:		56,677
Requested retained balance not supported:		315,442
Total OFA available to be distributed:	$	(2,887,607)

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. Camille Paton, Deputy City Clerk, City of San Gabriel
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office