DEPARTMENT OF FINANCE

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May 8, 2013

Ms. Tina Rodriguez, Administrative Services Officer
City of Santa Monica
1685 Main Street
Santa Monica, CA 90401

Dear Ms. Rodriguez:

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 April 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Santa Monica 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 April 1, 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 24, 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 transfers to the City of Santa Monica (City) in the amount of $126,091,096 between March 9, 2011 and March 9, 2012, are not allowed for the following reasons:
    - The Agency contends the transfers were pursuant to Cooperation Agreements between the City and the former redevelopment agency (RDA) dated from January 2003 to September 2010. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred between January 1, 2011 through June 30, 2012, by the former RDA or successor agency to the city, county, or city and county that created the former RDA, 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. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. The terms of the Cooperation Agreements do not meet either of the two exceptions. Furthermore, the underlying contracts associated with the Cooperation Agreements are between the City and various third parties, and the former RDA

is not a party to the agreements. Therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted.

- During the Meet and Confer process, the Agency stated that $1,073,472 transferred to the City was in relation to fiscal year 2010-11 ERAF payments that would need to be made pending the settlement of a lawsuit. However, the settlement has not been finalized. Furthermore, the item was not listed on the July through December 2013 Recognized Obligation Payment Schedule (ROPS) for payment after the settlement is reached. Once a settlement has been entered into by a competent court of law, the Agency may place the amount to be paid on a future ROPS for funding from the Redevelopment Property Tax Trust Fund.

It is our understanding the $76,713,121 of the $126,091,096 in cash transferred are restricted balances. Specifically, $18,806,866 is for ROPS obligations and the July True-Up payment and $57,906,255 are restricted loan proceeds. As such, the OFA available for distribution to the affected taxing entities will be increased by $49,377,975 ($126,091,096 - $76,713,121).

The Agency's OFA balance available for distribution to the affected taxing entities is $49,377,975 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	-
Finance Adjustments		
Add:		
Disallowed transfers:	$	49,377,975
Total OFA available to be distributed:	$	49,377,975

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 remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Finally, during the review of the DDR, DOF noted Property transfers between the City and the former RDA occurred on March 9, 2011, with a book value totaling $89,752,781, per an Option Agreement dated March 4, 2011. Finance also notes the Santa Monica Place shopping mall parking structures #7 and #8 in the DDR appear to have transferred appropriately per a lease agreement between the City and the Agency, upon full payment of the 2002 Lease Revenue Bonds. The Agency reports these bonds were paid off in 2008. However, it appears that the remaining property transferred to the City may likely not have been proper transfers. For informational purposes, Finance reminds the Agency that non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent the non-cash transferred assets are not for a government purpose or pursuant to an enforceable obligation, these assets should be returned to the Agency and disposed of in a manner consistent to the Agency's Long-Range Property Management Plan, pursuant to HSC section 34191.5. Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency.

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 Department of Auditor-Controller
California State Controller's Office