April 20, 2013

Mr. Aldo Schindler, Director of Community Development
City of Whittier
13230 Penn Street
Whittier, CA 90602

Dear Mr. Schindler:

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, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Whittier 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 18, 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 2, 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 Whittier (City) in the amount of $1,523,513 for operating loans were disallowed. During the Meet and Confer process, the Agency provided additional information showing that $345,599 and $283,963 of the $1,523,513 were funds borrowed from the City by the former Redevelopment Agency (RDA) to make payments in accordance with specific enforceable obligations. The remaining $893,951 represents operating loans between the City and the former RDA.

  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. These loans were issued after the first two years of the RDA's creation and the agreements were not solely for the repayment of indebtedness obligations. Therefore, the transfers were not made pursuant to an enforceable obligation and are not permitted. As such, the OFA balances available for distribution to the taxing entities will be increased by $1,523,513.

  The repayment of these loans may become enforceable obligations 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 Agency's requests to retain $4,007,989 to cover future obligations and $2,904,395 to cover fiscal year 2012-13 obligations are partially disallowed. The OFA balances available for distribution is being increased by $2,950,817 ($4,007,989 + $2,904,395 - $3,502,254 - $459,313), as further discussed below.

  For the July through December 2012 Recognized Obligation Payment Schedule (ROPS II) period, Finance approved $5,857,285 and the County Auditor Controller (CAC) distributed $3,502,254 from the Redevelopment Property Tax Trust Fund (RPTTF). On the July through December 2013 ROPS form (ROPS 13-14A), the Agency reported actual expenditures and the CAC verified that the Agency's expenditures on approved enforceable obligations for the ROPS II period did not exceed the amount of distributed RPTTF. Therefore, the retention of additional OFA balances is unnecessary and the Agency may retain $3,502,254 received from the RPTTF. To the extent the Agency did not fully expend the RPTTF received during the ROPS II, the CAC may make an adjustment to the RPTTF distribution for the July through December 2013 Recognized Obligation Payment Schedule (ROPS 13-14A) period pursuant to HSC section 34186 (a).

  For the January through June 2013 Recognized Obligation Payment Schedule (ROPS III) period, Finance approved $3,877,283 and the CAC distributed $3,417,970 from the RPTTF. This resulted in a $459,313 shortfall for the ROPS III period. The CAC did not make any adjustments for the January through June 2012 Recognized Obligation Payment Schedule (ROPS I) period on the January 2, 2013 ROPS III distribution pursuant to HSC section 34186 (a). As such, the Agency may retain $459,313 from OFA balances to ensure sufficient funding is available for the ROPS III period.

  The Agency stated they were expecting a deficit for ROPS 13-14A period. However, based on information available, there will be sufficient RPTTF available to cover enforceable obligations. For ROPS 13-14A, the Agency is requesting $2,782,197 from the RPTTF. The CAC estimates that $2,782,197 will be available to the Agency from the RPTTF with $1,330,209 in remaining residual balances that will be distributed to the affected taxing entities. Therefore, sufficient RPTTF will be available in the ROPS 13-14A period to cover obligations and it is unnecessary for the Agency to retain additional OFA balances.

  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 when a future balloon or uneven payment is expected pursuant to HSC section 34177 (d) (1) (A), 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 $4,952,983 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	478,653
Finance Adjustments		
Add:		
Disallowed transfers:	$	1,523,513
Requested retained balances not supported:		2,950,817
Total OFA available to be distributed:	$	4,952,983

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: Mr. Ben Pongetti, Redevelopment Manager, City of Whittier
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office