May 5, 2013

Mr. John Dutrey, Housing Program Manager
City of Rialto
131 South Palm Avenue
Rialto, CA 92376

Dear Mr. Dutrey,

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 Rialto 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 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 22, 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 following transfers were not allowed:
    - The Agency transferred cash in the amount $289,940 to the City of Rialto Non-Profit Public Building Authority for payment on the 2007 Certificates of Participation pursuant to the 2007 Reimbursement Agreement. During the Meet and Confer process, the Agency provided additional documents showing that the $289,940 was the amount expended prior to January 31, 2012. Furthermore, in the Recognized Obligation Payment Schedule for the January through June 2013 (ROPS III) period, the Agency requested $96,382 to be funded from "Other" funding sources and the Agency only expended $30,199 of the amount requested. Therefore, the OFA balances available for distribution to the taxing entities will be increased by $66,183 ($96,382 - $30,199).
    - Transfer of land valued at $13,764,414 to the City of Rialto (City). As evidenced by the purchase and sale agreement, the City purchased the land, and the former redevelopment agency (RDA) was expected to repay the City based on the costs of development. On January 26, 2012, the Agency transferred the land back to the City. Pursuant to HSC section 34163 (d), agencies are prohibited from disposing of assets by sale, long-term lease, gift, grant, exchange, transfer,

assignment, or otherwise, for any purpose. However, because land is not considered cash or cash equivalent, the adjustment will not affect the balance available for distribution to the affected taxing entities. The Agency should reverse the improper transfer, recover the land from the City, and describe the planned disposition of the property in its long-range property management plan as required by HSC section 34191.5.

These non-liquid assets transferred to the City are subject to the California State Controller's Office review of asset transfers. To the extent these properties do not meet criteria outlined in HSC section 34181 (a), they should be returned to the Agency and disposed of in a manner consistent with the Agency's Long Range Property Management Plan pursuant to HSC section 34191.5.

- Transfer of cash totaling $4,032,134 to the City, which consisted of $1,616,899 in cash, $1,591,532 in housing bonds, and $823,703 in grant proceeds are disallowed, as further discussed below.

  - During the Meet and Confer process, the Agency stated that $1,616,898 in cash was originally transferred from the Low and Moderate Income Housing Fund (LMIHF) to the City. Since these funds were not remitted during the LMIHF DDR process, the OFA balance available will be increased by $1,616,898.

  - For DDR purposes, the disallowed transfer of bond proceeds will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the 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.

  - As related to the grant proceeds, according to the grant agreements provided by the Agency, it appears the City and the former RDA were grant recipients, and not the Rialto Housing Authority as asserted in the DDR. However, because grant funds are considered restricted assets, the adjustment will not affect the balance available for distribution to the affected taxing entities. During the Meet and Confer process, the Agency stated that $18,084 of the grant proceeds identified were part of a City grant, not a former RDA grant. The Agency should reverse the improper transfer of $805,619 in grant proceeds and request authority to spend these grant proceeds on a duly authorized ROPS schedule for the period specified.

- The request to retain assets for legally restricted uses has been adjusted as follows:

  - The request to retain assets in the amount of $1,669,340 related to citation collections on behalf of the City. During the Meet and Confer process, the Agency provided additional information and documents showing that these proceeds are associated with the collection of citation fines and penalties imposed by the City pursuant to California Civil Code section 2929.3. Pursuant to Civil Code section 2929.3 (d), "Fines and penalties collected pursuant to this section shall be directed to local nuisance abatement programs." Therefore, these proceeds are legally restricted for a specific use and should not be remitted to the affected taxing entities. Finance is reversing its adjustment of $1,669,340.

- The request to retain assets in the amount of $70,000 for Exclusive Right to Negotiate Agreements. During the Meet and Confer process, the Agency provided additional information showing that $42,965 of the deposits need to be returned to the developers and $27,035 may be retained by the Agency to be distributed to the affected taxing entities. Therefore, Finance is reversing $42,965 of its adjustment and continues to increase the OFA balance available by $27,035.

- The request to retain assets in the amount of $3,423,698 for the I-10/Riverside Project. This item has been denied as an enforceable obligation by Finance in our letter dated December 18, 2012. However, because bond funds are considered restricted assets, the adjustment will not affect the balance available for distribution to the affected taxing entities. Finance notes that successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- The request to retain funds in the amount of $7,619,297 for fiscal year 2012-13 obligations. Based on further review during the Meet and Confer process, the Agency may retain $7,619,297 ($6,783,560 + $62,950 + $772,787), as further discussed below.

  - For the July through December 2012 (ROPS II) period, Finance approved $6,824,388 and the County Auditor Controller (CAC) distributed $6,415,129 from the Redevelopment Property Tax Trust Fund (RPTTF). For the July through December 2013 (ROPS 13-14A) period, the Agency reported actual expenditures during the ROPS II period of $6,586,024 for approved enforceable obligations and $198,768 for administrative costs. The CAC determined that the RPTTF covered $6,415,129 of the enforceable obligations and $0 of the administrative costs. This resulted in $170,895 ($6,586,024 - $6,415,129) in expenditures from the OFA balances to cover the shortfall for enforceable obligations. For the administrative costs, Finance approved $246,114 for the January through June 2013 period (ROPS III), which means $197,536 (3% x (ROPS II $6,625,620 + ROPS III $8,162,719) - $246,114) could be paid during the ROPS II period. Since the CAC reported $0 was paid from the RPTTF, then $197,536 could be paid from the OFA balances. Therefore, the Agency may retain $6,783,560 ($6,415,129 + $170,895 + $197,536) for the ROPS II period.

    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.

- For the January through June 2013 ROPS period (ROPS III), Finance approved $8,408,833 and the CAC distributed $8,345,883 from the RPTTF. Additionally, the CAC made a $62,950 adjustment for the January through June 2012 period (ROPS I) on the ROPS III January 2, 2013 distribution pursuant to HSC section 34186 (a). Furthermore, Finance approved up to $796,891 in expenditures to be made from OFA balances. Therefore, the Agency may retain $62,950 from the prior period adjustment and $772,787 ($7,619,297 - $6,783,560 - $62,950) for ROPS III approved enforceable obligations.

  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 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 $11,881,271 (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	10,171,154
Finance Adjustments		
Add:		
Disallowed transfers	$	1,710,117
Total OFA available to be distributed:	$	11,881,271

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. Robb Steel, Assistant to the City Administrator, City of Rialto
Ms. Vanessa Doyle, Auditor Controller Manager, County of San Bernardino
California State Controller's Office