DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

September 12, 2013

Mr. Oscar G. Rodriquez, City Manager
City of Calexico
608 Herber Avenue
Calexico, CA 92231

Dear Mr. Rodriquez:

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 August 7, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Calexico Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on May 23, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Because the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance was not bound to completing its review and making a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). Finance issued an OFA DDR determination letter on August 7, 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 August 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 DDR reported legally restricted assets in the amount of $19,377,007. Finance initially determined that the OFA balance available should be increased by $6,035,075. However, based on further review during the Meet and Confer process, the OFA balance should be increased by $3,961,372 ($2,491,516 - $2,073,703 + $3,543,559), as further discussed below.

    - A balance in the amount of $2,491,516 in the former Redevelopment Agency's (RDA) administrative account (Fund 219). The fund was used to account for the former RDA's tax increment. During the Meet and Confer process, the Agency stated that these funds, along with bond funds, were to be used for capital improvement projects; however, those projects were determined not to be enforceable obligations and were denied by Finance on prior Recognized Obligation Payment Schedules (ROPS). For the projects that were denied by Finance, they may be relisted on a subsequent ROPS to be funded from bond proceeds issued prior to January 1, 2011, once a Finding of Completion has been received. To the extent the Agency currently has capital improvement

projects that are enforceable obligations, they may be listed on a subsequent ROPS for payment from the Redevelopment Property Tax Trust Fund (RPTTF). Additionally, the Agency stated that they currently receive sufficient funding from the RPTTF for their bond debt service payments. The Agency did not provide any additional information or documentation that demonstrates a legal restriction or a need to retain this cash balance.

However, based upon further review during the Meet and Confer process, Finance identified $2,073,703 that should have been restricted in Procedure 9 for enforceable obligations during the 2012-13 fiscal year. Based on the Prior Period Estimated vs. Actual Payments tab submitted with the July through December 2013 ROPS (ROPS 13-14A) form, the Agency expended $1,211,876 on approved items ($125,000 from admin, $857,431 from RPTTF – Item 4 was over expended by $699, and $229,445 from Other – Item 3 was over expended by $4,375). Additionally, based on the invoices for the July through December 2012 ROPS (ROPS II) bond payments, there was an additional $678,068 (Item 1 - $13,608, Item 2 - $379,948, Item 3 - $243,813, and Item 4 - $40,699) in unreported bond expenditures. Furthermore, on ROPS 13-14A there was a self-reported prior period adjustment of $183,759 for the ROPS II period. Therefore, $2,073,703 ($1,211,876 + $678,068 + $183,759) should be retained for ROPS II obligations and the ROPS 13-14A prior period adjustment. Finance will decrease the OFA balance available by $2,073,703.

- Balances in cash account 10199 of $1,037,107 from Fund 405 and $29,751 from Fund 407 of the former RDA. During the initial review, the Agency provided approximately 15 years of accounting records for these two funds documenting funding from tax increment and interest earned on this tax increment. However, the Agency did not provide documentation restricting this balance. Therefore, the balance to be distributed to the affected taxing entities was increased by $1,066,858 ($1,037,107 + $29,751).

  A balance of $2,476,701 in cash account 10199 of the former RDA's various debt service funds. During the initial review, the Agency explained that tax increment was allocated as follows to pay the debt service for several of the former RDA's bonds:

  - RDA Debt Service of $1,292,848 (Fund 302)
  - RDA 2000 Debt Service of $45,331 (Fund 304)
  - RDA 2003C Debt Service of $502,570 (Fund 305)
  - RDA 2006 Debt Service of $388,730 (Fund 306)
  - RDA 2011 Debt Service of $193,288 (Fund 308)
  - RDA 2011 of $53,934 (Fund 309)

  However, the Agency did not provide documentation to demonstrate any legal restriction on these funds. Additionally, the Agency has been receiving sufficient funding from the RPTTF to pay its debt service. Therefore, the balance to be distributed to the affected taxing entities was increased by $2,476,701 ($1,292,848 + $45,331 + $502,570 +$388,730 + $193,288 + $53,934).

  During the Meet and Confer process, the Agency stated that all of these funds consisted of either bond reserves or unspent bond proceeds. However, based

on the documents provided, all bond reserve accounts are being maintained by a fiscal agent, not the Agency; cash with the fiscal agent is accounted for in account 10123. The Agency provided additional accounting records for Funds 302, 304, 306, 308, and 309; however, the documents provided did not support the Agency's claim that cash account 10199 contained unspent bond proceeds.

For Fund 302, the Agency provided the general ledger trial balance as of June 30, 2003, which shows that the bond proceeds ($19,335,000) and issue premium ($780,300) for the Refunding Bonds, Issue of 2003 A and B was recorded in accounts 49903 and 49904. The cash balance in account 10199 as of June 30, 2003, was $699,092. This amount consisted entirely of transfers in of property tax revenues for debt service payments. Therefore, the Agency did not provide sufficient documents to support cash account 10199 for Fund 302 contained bond funds as of June 30, 2012.

For Fund 304, the Agency provided the general ledger trial balance for account 49903 as of June 30, 2001, and journal entries made during fiscal year 2000-01, which shows that $1.17 million of the Tax Allocation Bonds, Issue of 2000, was recorded in account 49903. Based on the journal entries provided, $562,148 of the funds were accounted for in cash account 10123 with an investment loss of $9,030 and $616,882 of the funds were used for bond issuance expenditures. Therefore, the Agency did not provide sufficient documents to support cash account 10199 for Fund 304 contained bond funds as of June 30, 2012.

For Fund 306, the Agency provided general ledger trial balance for account 49903 as of June 30, 2007, and journal entries made during fiscal year 2006-07. Based on the journal entries provided, $9,995,000 of the Tax Allocation Refunding Bonds, Issue of 2006, $4,000 of the premium from the bond issuance, $33,940 of the transfer from the 2000 Indenture, and $191,433 from the former RDA were accounted for in cash account 10199. However, $9,643,320 was expended on defeasance and $581,054 was expended on bond issuance, which left a $0 balance. Therefore, the Agency did not provide sufficient documents to support cash account 10199 for Fund 306 contained bond funds as of June 30, 2012.

For Fund 308, the Agency provided general ledger trial balance for account 49902 as of June 30, 2011 and journal entries made during fiscal year 2010-11. Based on the general ledger and journal entries provided, the Agency recorded $7.12 million of Tax Allocation Bonds, Issue of 2011, in account 49902. Additionally, based on the journal entries provided, $6,184,410 is in cash account 10103, $654,208 is in cash account 10123, and $281,382 was expended on bond issuance costs. Therefore, the Agency did not provide sufficient documents to support cash account 10199 for Fund 308 contained bond funds as of June 30, 2012.

For Fund 309, the Agency provided the general ledger trial balance as of June 30, 2011, which shows that the bond proceeds ($1,815,000) for the Tax Allocation Bonds, Issue of 2011 was recorded in account 49902. The cash balance in account 10199 as of June 30, 2011, was $43,267. This amount consisted entirely of transfers in of property tax revenues for debt service

payments. Therefore, the Agency did not provide sufficient documents to support cash account 10199 for Fund 309 contained bond funds as of June 30, 2012.

Furthermore, based on Attachment A, page 8 of the OFA DDR report prepared by Pun & McGeady, LLP, "[t]here were no unspent bond proceeds that are restricted at June 30, 2012." Additionally, on page 9, it states "[t]here are no legal documents supporting this restriction." The only explanation provided by the Agency in the OFA DDR report is that "Successor Agency cash is not really available to the City to use in any way. It can only be used to satisfy obligations that become due for the RDA Successor Fund and can only be used to satisfy obligations of the RDA Successor Agency, when the RPTTF distribution monies run out." However, HSC section 34177 (d) states that the Agency is to remit unencumbered balances of former RDA funds to the County Auditor-Controller for distribution to the taxing entities. The Agency has not shown that there is an encumbrance on these funds legally restricting their use nor has the Agency shown that insufficient funds from the RPTTF will be available to make their bond debt service payments in the future. Therefore, the OFA balance available for distribution continues to be increased by $3,543,559 ($1,066,858 + $2,476,701).

Additionally, HSC provides successor agencies with various methods to address short-term cash flow issues should insufficient RPTTF funding be available to cover bond debt service payments. 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 $3,961,372 (see table below).

| **OFA Balances Available For Distribution To Taxing Entities** | | |
|---|---|---|
| Available Balance per DDR: | $ | - |
| Finance Adjustments | | |
| Legally restriced balances not supported | | 3,961,372 |
| **Total OFA available to be distributed:** | $ | 3,961,372 |

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, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

Cc: Mr. John Quinn, Finance Director, City of Calexico
Ms. Ann McDonald, Auditor-Controller, Imperial County
Mr. Steven Mar, Bureau Chief, Local Government Audit Bureau, California State Controller's Office