DEPARTMENT OF FINANCE
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April 13, 2013

Ms. Marcela Piedra, Director of Economic Development
City of El Centro
1249 Main Street
El Centro, CA 92243

Dear Ms. Piedra:

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 8, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of El Centro 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 8, 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 21, 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:

- Transfers in the amount of $2,250,000. The Agency's accounting records indicated two transfers were made to the City of El Centro (City) on June 8, 2011 and December 3, 2011 for $950,000 and $1,300,000, respectively. Per City Council Resolution numbers 10-67 and 11-45, the City provided two loans to the former Redevelopment Agency (RDA) in the amounts of $950,000 and $1,300,000, respectively. 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. As such, the transfers are not enforceable obligations and pursuant to HSC section 34167.5, asset transfers after January 1, 2011, between the city that created the RDA and the former RDA for which an enforceable obligation does not exist are not permitted. Therefore, the OFA balance available is being increased by $2,250,000.

  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 request to retain $15,560,859 in current unencumbered OFA balances to cover future obligations is partially disallowed. The OFA balances available for distribution is being increased by $8,431,194, as further discussed below ($15,560,859 - $3,474,950 - $1,225,960 - $2,428,755):

  Part of the requested amount includes $3,528,904 for July through December 2011 debt service. The Agency stated that this amount was paid during the stated period from the OFA balances. Since the payment was made prior to June 30, 2012, the amount would not have been included in the balances as of June 30, 2012. Therefore, an adjustment to restrict the funds is not necessary.

  For the July through December 2012 ROPS period (ROPS II), Finance approved $3,474,950 and the County Auditor Controller (CAC) distributed $1,558,311 from the Redevelopment Property Tax Trust Fund (RPTTF). This resulted in a shortfall of $1,916,639 for the ROPS II period. The Agency provided additional documents showing $1,916,639 was expended from the OFA balances to cover the shortfall. Therefore, the Agency may retain $3,474,950 for the ROPS II period.

  For the January through June 2013 ROPS period (ROPS III), Finance approved and the CAC distributed $2,238,130 from the RPTTF. The CAC did not make any adjustments for the January through June 2012 period (ROPS I) on the ROPS III January 2, 2013 distribution pursuant to HSC section 34186 (a). As such, the Agency received sufficient funds from the RPTTF to cover all of the approved expenditures in the ROPS III period and it is unnecessary for the Agency to retain current OFA balances for obligations that have already been funded through a separate process.

  For the July through December 2013 ROPS period (ROPS 13-14A), the Agency is requesting $3,588,130 from RPTTF. The CAC estimates that $2,362,170 will be available to the Agency from RPTTF. This results in an estimated shortfall of $1,225,960. Therefore, the Agency may retain $1,225,960 for the anticipated shortfall in the ROPS 13-14A period.

  Additionally, due to the uneven payments for the bond debt service, the Agency has not had sufficient RPTTF in the first half of the fiscal year to cover the payments due. The Agency should be requesting the accumulation of reserves on the ROPS in the second half of the fiscal year to cover the expected uneven payment pursuant to HSC section 34177 (d) (1) (A). However, based on prior year residual amounts that have been available in for the second half of the fiscal year, these reserves would still be insufficient to cover the uneven payments due in the first half of the fiscal year. Therefore, Finance is approving the request to retain the remaining cash on hand totaling $2,428,755 ($4,879,665 + $2,250,000 - $3,474,950 - $1,225,960) to cover any shortfalls for the uneven payments in the first half of each fiscal year.

  Should any further deficits 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 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:

- Balances needed for fiscal year 2012-13 obligations in the amount of $132,500. The enforceable obligations listed in the DDR are included in ROPS III. These obligations were paid from the RPTTF distribution the Agency received from the CAC in January 2013. Therefore, retention of the amount is not allowed.

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:	$	(10,813,694)
Finance Adjustments		
Add:		
Disallowed transfers	$	2,250,000
Retained balances for 2012-13 fiscal year obligations		132,500
Requested retained balance not supported		8,431,194
Total OFA available to be distributed:	$	-

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. Reuben A. Duran, City Manager, City of El Centro
Ms. Ann McDonald, Special Accounting Manager, County of Imperial
California State Controller's Office