DEPARTMENT OF FINANCE
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May 4, 2013

Mr. Gilbert Rojas, Director of Finance
City of Escondido
201 North Broadway
Escondido, CA 92025

Dear Mr. Rojas:

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 Escondido Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 10, 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 17, 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:

- Assets transferred in the amount of $20 million is disallowed. The former Community Development Commission of Escondido transferred cash in the amount of $20 million to the City of Escondido (City) on February 16, 2011. The transfer was to accelerate a City loan repayment. However, per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency (RDA) or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 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, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a third party other than the city, county, or city and county that created the former RDA. HSC section 34171 (d) (2) states agreements, contracts, or arrangements between the city, county, or city and county that created the RDA and the former RDA are not enforceable obligations. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

  It is our understanding that upon receiving the July True-Up Demand Letter from the County Auditor Controller (CAC), the City Council via Resolution 2012-132R ordered this transfer reversed. However, instead of transferring back $20 million in cash, the Agency received $13.2 million in cash as well as property purchased with the funds valued at $6.7 million. HSC section 34163 (b) prohibits an Agency from entering into contracts with any entity for any purpose after June 28, 2011. Since the return of inappropriate asset transfers occurred in or around July 2012, the Agency was unauthorized to accept property in lieu of the liquid asset that was originally transferred.

To protect assets of the former RDAs, HSC section 34167.5 gives the California State Controller's Office (Controller) the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency after January 1, 2011. In addition, HSC section 34179.6 (d) authorizes Finance to adjust the DDR in order to protect balances due to the affected taxing entities. As such, the amount available for distribution to taxing entities will be adjusted by $20 million.

After the Agency receives a Finding of Completion from Finance, these loans may become enforceable and eligible to be repaid through the Recognized Obligation Payment Schedule (ROPS) process.

- Balances requested to be retained in the amount of $4,784,272 for enforceable obligations. During the Meet & Confer process, the Agency requested that the amount to be retained be increased by $2,180,145 to $6,964,417. However, based on additional review during the Meet and Confer process, the amount to be retained should be increased by $1,580,145 to $6,364,417 ($5,021,617 + $1,342,800 - $4,784,272), as further described below:

  For the July through December 2012 ROPS (ROPS II) period, Finance approved $12,837,747 and the County Auditor Controller (CAC) distributed $5,018,229 from the Redevelopment Property Tax Trust Fund (RPTTF). This resulted in a shortfall for the ROPS II period. The Agency provided additional information showing $5,021,617 was expended from the OFA balances to cover the shortfall. Therefore, the Agency may retain $5,021,617 to cover the shortfall for the ROPS II period.

  For the January through June 2013 ROPS (ROPS III) period, Finance approved $3,268,773 and the CAC distributed $1,925,973 from the RPTTF. The CAC made a $24,997 adjustment for the January through June 2012 period (ROPS I) on the ROPS III January 2, 2013 distribution pursuant to HSC section 34186 (a). This resulted in a $1,317,803 ($3,268,773 - $1,925,973 - $24,997) shortfall for the ROPS III period. Therefore, the Agency may retain $1,342,800 ($24,997 + $1,317,803) to ensure sufficient funds are available for the ROPS III period.

  Should 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's OFA balance available for distribution to the affected taxing entities is $3,744,312 (see table on the next page).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	(14,675,543)
Finance Adjustments		
Add:		
Disallowed cash transfer	$	20,000,000
Increase to retained balances	$	(1,580,145)
Total OFA available to be distributed:	$	3,744,312

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: Ms. Joan Ryan, Finance Manager, City of Escondido
Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego
California State Controller's Office