DEPARTMENT OF FINANCE
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August 30, 2013

Ms. Laura Gutierrez, Finance Director
City of Imperial
420 South Imperial Avenue
Imperial, CA 92251

Dear Ms. Gutierrez:

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 Imperial Successor Agency (Agency) submitted an oversight board approved OFA DDR to Finance on January 16, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Since the Agency did not meet the January 15, 2013 submittal deadline pursuant to HSC section 34179.6 (c), Finance was not bound to complete its review and make a determination by the April 1, 2013 deadline pursuant to HSC section 34179.6 (d). 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 August 14, 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 Agency's request to retain $5,991,662 as legally restricted assets is partially approved. Per the OFA DDR, the amount claimed is legally restricted bond proceeds, amounts needed for an agreement between the City of Imperial (City) and the Agency, and the Redevelopment Property Tax Trust Fund (RPTTF) distribution. Our review indicates the following:
  - The Agency claims bond proceeds totaling $2,099,901 is legally restricted per the bond covenants. However, documentation provided by the Agency only supports $1,598,276 is bond proceeds with a fiscal agent. The remaining $501,624 is not supported as bond proceeds; therefore, the OFA balance available for distribution will be increased by the unsupported amount, $501,624.
  - Per the OFA DDR, funds totaling $3,401,000 is pursuant to agreements and arrangements between the City and the Agency. Per HSC section 34179.5, an 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 an enforceable obligation does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. Therefore, the restriction on these funds is not pursuant to an enforceable obligation and is not permitted. Therefore, the OFA balance available for distribution will be increased by $3,401,000.

During the Meet and Confer, the Agency claims the funds requested above ($2,099,901 + $3,401,000) are bond proceeds. The Agency provided a schedule for three bank accounts, trial balances as of June 30, 2012 for the former RDA accounts and the new Agency account, and documentation of wire transfers. However, our review shows one of the wire transfers occurred in 2008 and not within the relevant time period to conclusively determine that bond funds remained in the funds as of June 30, 2012. Documentation for another wire transfer did not contain sufficient information to show the funds wired were bond funds. In addition, discussions with Agency staff confirmed that bond funds had been deposited into accounts with other funds. Therefore, only $1,598,276 out of the $5,500,901 is bond proceeds with a fiscal agent. The other amounts are not legally restricted.

The Agency claims RPTTF distributions totaling $490,761 is the balance of previous RPTTF distributions and is needed for approved obligations. We note this item may be eligible for retention under Procedure 9 of the Agreed-Upon Procedures report; however, for DDR purposes, it is not a legally restricted asset. Therefore, the OFA balance available for distribution will be increased by $490,761 and this request will be addressed in the retention below.

- The Agency's request to retain $1,263,467 to fund enforceable obligations is partially approved. Our review indicates the Agency was approved to spend $1,735,004 for the July through December 2012 period (ROPS II); however, the County Auditor-Controller (CAC) only distributed $359,511. For the ROPS II period, the Agency would have been permitted to retain the actual amount expended for approved obligations up to the amount approved; however, the Agency did not submit a the "Prior Period Payments" on the July through December 2013 ROPS (ROPS 13-14A) to demonstrate actual expenditures paid for the period.

  The Agency will only be permitted to retain the RPTTF distributed by the CAC in the amount of $359,511. This is allowed because the amount was received prior to June 30, 2012 and assumes the amount is available in the OFA DDR. Additionally, if these funds are unspent, the CAC will make the necessary prior period adjustments in accordance with HSC section 34186 (a). Therefore, the OFA balance available for distribution will be increased by the remaining unsupported amount of $903,956.

- The Agency's request to retain $125,000 to fund the administrative cost allowance for the Recognized Obligations Payment Schedule (ROPS) for the January through June 2013 period (ROPS III) is not permitted. Our review indicates the Agency was distributed all approved RPTTF for the ROPS III period, which included the amount requested for administrative costs; therefore, it is improper to retain funds for items funded through RPTTF. The OFA balance available for distribution has been increased by $125,000.

Finally, although not requested, our review indicates the Agency did not receive all approved RPTTF for the ROPS 13-14A period. As noted above, the Agency did not submit the ROPS 13-14A properly; therefore, Finance only approved the amounts needed for debt service payments. Finance determined the Agency needed $1,057,315 for debt service payments; however, the CAC only distributed $843,563. The Agency will be permitted to retain an additional $213,752 to ensure all debt service payments are satisfied.

The Agency's OFA balance available for distribution to the affected taxing entities is $5,215,838 million (see table below).

OFA Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	7,249
Finance Adjustments		
Legally restricted assets not supported		4,393,385
Balances retained for funding of enforceable obligations		903,956
Balances retained for fiscal year 2012-13 obligation		125,000
Additional allowed retention		(213,752)
Total OFA available to be distributed:	$	5,215,838

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 Danielle Brandon, Analyst, at (916) 445-1546,

Sincerely,

for

STEVE SZALAY
Local Government Consultant

cc: Mr. Jeorge Galvan, Planning and Development Director, City of Imperial
Ms. Ann McDonald, Special Accounting Manager, Imperial County
California State Controller's Office