



April 19, 2013

Mr. Gary Ameling, Director of Finance
Santa Clara Successor Agency
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Ameling:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated March 15, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Santa Clara Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) to the California Department of Finance (Finance) on February 19, 2013. Finance issued a LMIHF DDR determination letter on March 15, 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 3, 2013.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is not revising the adjustments made in our previous LMIHF DDR determination letter. The Agency's LMIHF balance available for distribution to the affected taxing entities remains \$63,179,968. The specific contentions in the Agency's Meet and Confer request are addressed below:

The Agency claims \$6,907,667 should not be available for distribution to the taxing entities because the funds have been disbursed pursuant to a Cooperation Agreement dated February 8, 2011 by and between the former redevelopment agency and the City of Santa Clara. They claim the retention is also authorized by the Agreement of Assignment dated March 9, 2011 by and between the former redevelopment agency and the recently established Housing Authority, which is a component of the City. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable, unless issued within two years of the RDA's creation date or for issuance of indebtedness to third-party investors or bondholders. These agreements were issued after the first two years of the former RDA's creation and are not associated with the issuance of debt. Therefore, these items are not enforceable obligations.

In addition, the Agency claims the funds are committed to the ROEM Senior Housing Project pursuant to the Acquisition Loan Agreement with ROEM Apartment Communities for 2525-2527 El Camino Real dated July 12, 2011. HSC section 34163 (b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011. Therefore, the contract is not an enforceable obligation.

For the reasons stated above, the retention of \$6,907,667 is not allowed and the DDR's stated funds that are available for distribution to the taxing entities should include these balances.

- The loan from the Housing Authority to the City of Santa Clara in the amount of \$5,900,000 is not allowed to be retained through the LMIHF DDR process. The City in turn loaned these funds to the Agency for obligations on the Recognized Obligation Payment Schedule (ROPS) II. The funding for this item was denied in our May 30, 2012 and October 15, 2012 Recognized Obligation Payment Schedule (ROPS) determination letters. The Agency contends the loan was necessary to pay enforceable obligations as well as the July True Up Payment. However, the denial of this funding was upheld in our December 18, 2012 ROPS III Meet and Confer determination letter. Therefore, the DDR's stated funds that are available for distribution to the taxing entities should include these balances.

Finance will ensure these funds are not double counted in the Agency's Other Funds and Accounts Due Diligence Review.

- Agency obligations paid without having been listed on an Enforceable Obligation Payment Schedule (EOPS) or ROPS in the amount of \$17,716,867 is not permitted. Only obligations approved on an EOPS or ROPS were authorized for payment during these periods. To the extent these are enforceable obligations, the Agency should place these items on a future ROPS, at which time they are subject to review and approval from the Agency's oversight board and Finance.

HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified above within five working days, plus any interest those sums accumulated while in the possession of the recipient. During the Meet and Confer process, the Agency stated that only \$32,655,434 in LMIHF is available for immediate distribution to the affected taxing agencies. HSC section 34179.6 (h) (3) authorizes Finance to consider an installment payment plan. Should the Agency not possess the 63,179,968 required to be remitted through the LMIHF DDR process, please work with Finance to collaboratively develop a payment plan.

Pursuant to HSC section 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 and Finance's Housing Assets Transfer letter dated September 5, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Wendy Griffe, Supervisor or Derk Symons, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant