



December 14, 2012

Mr. Steve Toler, Assistant City Manager
City of Foster City
610 Foster City Blvd.
Foster City, CA 94404

Dear Mr. Toler:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated November 7, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Foster City 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 October 10, 2012. Finance issued a LMIHF DDR determination letter on November 7, 2012. 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 November 28, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustment.

Originally, the City's request to retain balances needed to satisfy Recognized Obligation Payment Schedule (ROPS) obligations in the amount of \$286,500 was denied because LMIHF amounts were not included on any ROPS as the funding source.

Through the Meet and Confer process, the Agency agrees that \$102,883 of the \$286,500 is available for distribution to the taxing entities. However, the Agency continues to believe the remaining \$183,617 was used for a valid expenditure that was approved on ROPS I. The Agency argues the funding source identified as reserves on ROPS I was appropriate, since they planned on making the payment from LMIHF reserves, not reserves that originated from 80 percent increment. The discrepancy comes from what Finance considers a coding error and what the Agency considers a different interpretation of what the funding source "reserve" is comprised of. The Agency was able to provide accounting records to verify that \$183,617 was paid specifically from their LMIHF. Therefore, Finance no longer objects to \$183,617 of the \$286,500. The remaining amount of \$102,883 remains as an adjustment and should be remitted to the county auditor-controller.

Finance continues to believe some of the adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities is appropriate. HSC section 34179.6 (d)

authorizes Finance to make these adjustments. We maintain the adjustments continue to be necessary for the following reason:

- Funds in the amount of \$6,312,500 were transferred to the City of Foster City to be used for an agreement with Northwestern Mutual and Housing Endowment and Regional Trust of San Mateo County. The transfer to Foster City is not allowed; however the amounts are approved for spending during the period of July through December 2012. Therefore there is no effect on the amount to be remitted to the county for disbursement to the taxing entities. The Agency did not contest to this item; therefore no changes have been made.

During the Meet and Confer process, the Agency noted an error in the beginning balance listed on the LMIHF DDR determination letter dated November 7, 2012. The beginning balance has been adjusted to reflect the correct amount. The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$12,743,265 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 12,640,382
Finance Adjustments	
Add:	
Disallowed transfers:	\$ 6,312,500
Amounts needed to satisfy ROPS for 2012-13 fiscal year	\$ (6,312,500)
Requested retained balance not supported:	102,883
Total LMIHF available to be distributed:	\$ 12,743,265

This is Finance's final determination of the LMIHF 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.

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 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 August 30, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Zachary Stacy, Manager or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Ms. Lin-Lin Cheng, Finance Director, Foster City
Mr. Bob Adler, Auditor-Controller, County of San Mateo
Ms. Shirley Tourel, Auditor, County of San Mateo
California State Controller's Office