



REVISED

December 24, 2012

Mr. Ken Lee, Redevelopment Consultant
City of Irwindale
5050 North Irwindale Ave.
Irwindale, CA 91706

Dear Mr. Lee:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) Meet and Confer determination letter dated December 20, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Irwindale successor agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 16, 2012. Finance issued a LMIHF DDR determination letter on November 13, 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 December 7, 2012 and a Meet and Confer determination letter was issued on December 20, 2012. This letter revises the December 20, 2012 letter to remove one of the adjustments previously made by Finance.

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 adjustments:

- Finance's November 13, 2012 letter adjusted the LMIHF balance by \$155,000 for a cash transfer to the Housing Authority. Upon review of supporting documents provided by the Agency, \$155,000 in LMIHF funds were transferred to the Irwindale Housing Authority for payment to the Northridge Group for acquisition of property to be used for affordable housing. Therefore, the LMIHF balance available for distribution to the taxing entities has been revised by \$155,000. This adjustment reversal was also reflected in our December 20, 2012 letter.
- Finance's December 20, 2012 letter adjusted the LMIHF balance by \$1 million. Finance's stated reason for the adjustment was:

"the transfer was for payment of a 55-year rent subsidy totaling \$1.3 million. While the encumbrance may have transferred to the Housing Authority, the payment of these encumbrances are the responsibility of the Agency, as such, these obligations must be reflected on a ROPS and approved by the oversight board and Finance. Therefore, the Agency's request to retain \$1 million is not allowed."

Upon re-review of the documents provided in the Meet and Confer meeting and in consideration of the December 21, 2012 letter provided by Ken Lee, Community Development Director/Redevelopment Consultant on behalf of the Agency, Finance is reversing this adjustment. This transfer of 20 percent set-aside funds was authorized by the March 2011 Disposition and Development Agreement (DDA) between the former Redevelopment Agency, the Irwindale Housing Authority, and the Northridge Group, as well as the May 25, 2011 Joint Resolutions 2011-21-2507, CRA 2011-08-544, and HA 2011-04-032. The transfer is not to pay future rent subsidies as our December 20, 2012 letter suggests, but instead, the Northridge Group will use these funds to complete an affordable housing project pursuant to the DDA. Therefore, Finance is reversing this adjustment.

However, 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:

- Finance continues to believe the cash transfer in the amount of \$3.6 million to the City of Irwindale (City) in March 2011 should be returned to the Agency and remitted to the county auditor controller for distribution to the taxing entities. The 1975 informal agreement (City resolution) is between the City and the former redevelopment agency (RDA). The balance of the loan was paid off in one lump sum in March 2011, as there was no established repayment schedule. The Agency claims the original loan principle of \$194,598 in 1975 plus an additional \$194,598 in 1976 grew to \$3.6 million over a 36-year period. Documentation provided by the Agency shows the interest rate varied, but averaged over 11 percent for 14 years between 1985 and 1999. The interest rate dropped to one percent in 2000 and dropped again to zero percent in 2003.

HSC section 34171 (d) (1) (B) states that loans of moneys borrowed by the redevelopment agency for a lawful purpose are enforceable, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms. The transfer of these funds occurred prior to the passage of the redevelopment dissolution legislation and therefore, HSC section 34171 (d) (1) (B) cannot be used as Finance's authorization to make this adjustment. However, Finance notes the Agency did not provide an established repayment schedule or an executed loan agreement showing that the Agency was contractually obligated to repay the loan.

Additionally, the Agency transferred these cash assets after the legal deadline of January 1, 2011 and the asset is not committed to a third party. Pursuant to HSC section 34167.5, the California State Controller (Controller) shall review the activities of redevelopment agencies to determine whether an asset transfer has occurred after January 1, 2011, between the former redevelopment agency and the city that created the redevelopment agency or any other public agency. If such an asset transfer did occur during that period and the government agency that received the asset is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the Agency.

Mr. Lee's December 21, 2012 letter correctly points out that HSC section 34179.6 (d) authorizes the Controller, and not Finance to claw back assets that may have transferred inappropriately. However, HSC section 34179.6 (d) authorizes Finance to make

adjustments based on our analysis and conclusions of what unencumbered LMIHF balances should be available for distribution to the taxing entities. Therefore, the Agency's LMIHF unencumbered balance will continue to be adjusted by \$3.6 million.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$6,411,213 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities	
Available Balance per DDR:	\$ 2,771,978
Finance Adjustments	
Add:	
Adjustment to the June 30, 2012 balance:	3,639,235
Total LMIHF available to be distributed:	\$ 6,411,213

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 September 5, 2012 do not in any way eliminate the Controller's authority.

Mr. Lee
December 24, 2012
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Please direct inquiries to Kylie Le, Supervisor or Michael Barr, Lead Analyst at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

STEVE SZALAY
Local Government Consultant

cc: Ms. Eva Contreras, Finance Manager, City of Irwindale
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office