DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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December 8, 2012

Mr. Donald Parker, Finance Director
City of Montclair
5111 Benito Street
Montclair, CA 91763

Dear Mr. Parker:

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 Montclair 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 11, 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 29, 2012.

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

- Balances needed to satisfy enforceable obligations for the 2011-12 fiscal year totaling $1,165,547 for the Rehabilitation Loan Agreement. Finance has revised this amount to $1,000,000 to reflect items denied on the Agency's Recognized Obligation Payment Schedule (ROPS III) for the January 1, 2013 through June 30, 2013 period. The item continues to be denied as a result of the ROPS III Meet and Confer process.

However, Finance continues to believe one 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:

- Balances needed to satisfy enforceable obligations for the ROPS January 1, 2013 through June 30, 2013 period in the amount of $14,014 for housing employee costs. Maintenance and/or administrative costs associated with the former redevelopment agency's (RDA) previous housing functions are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that, "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" includes the transfer of any administrative costs.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to $7,884,597 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	6,870,583
Finance Adjustments		
Add:		
Denied ROPS items		1,014,014
Total LMIHF available to be distributed:	$	7,884,597

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 25, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,

For

STEVE SZALAY
Local Government Consultant

cc: Ms. Marilyn Staats, Deputy City Manager, City of Montclair
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County
California State Controller's Office