



December 15, 2012

Ms. Francesca Tucker-Schuyler, Interim City Administrator
City of Montebello
1600 West Beverly Boulevard
Montebello, CA 90640-3932

Dear Ms. Tucker-Schuyler:

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) determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Montebello Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 11, 2012. Finance issued a LMIHF DDR determination letter on November 9, 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 6, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to believe 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 reasons:

- The Agency contends the \$9.1 million retention is required as security under their bond documents and therefore, is encumbered through a pledge to satisfy debt service obligations for three separate bond issuances. Finance originally denied the item because the Agency had not adequately proven there will be insufficient property tax revenues to pay for \$9.1 million in obligations. However, per the bond indentures, all housing set-aside revenues received by the Agency during any bond year in excess of the amount required to be deposited in the Housing Bond Payment Account during such bond year shall be released from the pledge and lien; and shall be deposited in the housing fund (LMIHF) to be applied by the Agency for any lawful purposes of the housing fund. Therefore, the balance of the LMIHF is not allowed to be retained above and beyond the approved bond payment amount for fiscal year 2012-13. As such it is not necessary to retain the requested funds.
- Since Redevelopment Property Tax Trust Fund funding were approved to pay the bond debt obligations for the Recognized Obligation Payment Schedule (ROPS) period July to December 2012 (ROPS II), Finance will only allow LMIHF obligations to be retained for the period January to June 2013 (ROPS III). LMIHF bond debt obligations totaling

\$338,365 were approved by Finance for the ROPS period January through June 2013. As such, Finance is adjusting the balance to reflect the \$338,365 in approved ROPS III expenditures.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$8,719,322 (see table below).

| LMIHF Balances Available For Distribution To Taxing Entities | |
|---|---------------------|
| Available Balance per DDR: | \$ - |
| Finance Adjustments | |
| Add: | |
| Requested retained balance not supported: | \$ 9,057,687 |
| Approved LMIHF expenditures for ROPS III: | (338,365) |
| Total LMIHF available to be distributed: | \$ 8,719,322 |

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 27, 2012 do not in any way eliminate the Controller's authority.

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Please direct inquiries to Kylie Le, Supervisor or Brian Dunham, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Mr. Michael Huntley, Director of Planning, City of Montebello
Mr. Christopher Cardinale, Deputy City Attorney, City of Montebello
Ms. Kristina Burns, Manager, Los Angeles County Department of Auditor-Controller
California State Controller's Office