



December 13, 2012

Mr. John Raymond, Director of Community & Economic Development
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Dear Mr. Raymond:

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 Palm Springs Successor Agency (Agency) submitted an oversight board approved Low and Moderate Income Housing Fund Due Diligence Review (DDR) to the California Department of Finance (Finance) on October 15, 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 December 6, 2012.

The DDR indicates the Low and Moderate Income Housing Fund (LMIHF) amount to be remitted to the County for distribution to taxing entities is \$9,189,521. However, the Agency believes the available LMIHF balance for distribution should be \$7,701,693 and requested a Meet and Confer. The difference of \$1.5 million relates to Exhibit D, Item 49 that was denied on the Housing Assets Transfer Form.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to agree with the DDR reported amount as follows:

Finance objected to the transfer of the asset because the \$1.5 million loan was issued on August 3, 2011 after June 27, 2011 when redevelopment agencies were dissolved. The Agency states that the project (including the related loan, promissory note, deed of trust, regulatory agreement, and owner participation agreement) was approved on June 15, 2011 during a joint meeting of the City of Palm Springs Council and the former redevelopment agency. However, Finance maintains that the loan and the owner participation agreement were executed after June 27, 2011 and continues to object to the transfer of the item as a housing asset. HSC section 34163 (b) prohibits an agency from entering into agreements, obligations, or contracts with any entity for any purpose after June 27, 2011.

Since this \$1.5 million loan has already been disbursed, this amount needs to be replenished in the LMIHF. HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), or requesting the money to be returned by the

developer. The Agency should seek guidance from their oversight board to determine the most appropriate solution for their situation. Because the Agency has alternatives to address short term cash flow shortages, Finance deems it is not necessary for Agency to retain the requested funds.

As a result, the Agency's LMIHF balance available for distribution to the affected taxing entities continues to be \$9,189,521. Per your November 15, 2012 letter to Finance, \$7,701,693.13 has already been wired to the Riverside County Treasurer. Please remit the remaining \$1.5 million.

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 above 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.

Mr. Raymond
December 13, 2012
Page 3

Please direct inquiries to Beliz Chappuie, Supervisor or Mindy Patterson, Lead Analyst at (916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a stylized flourish at the end.

STEVE SZALAY
Local Government Consultant

cc: Mr. Geoffrey Kiehl, Director of Finance, City of Palm Springs
Ms. Pam Elias, Chief Accountant, Property Tax Division, County of Riverside
Auditor Controller
California State Controller's Office