DEPARTMENT OF FINANCE
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July 19, 2013

Mr. Bradley Ward, Finance Director
San Pablo Local Successor Agency
13831 San Pablo Avenue
San Pablo, CA 94806

Dear Mr. Ward:

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 June 13, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Pablo Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on May 20, 2013. Finance issued a LMIHF DDR determination letter on June 13, 2013. 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 July 3, 2013.

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

- The stated balance as of June 30, 2012 was adjusted by $19,741 as Finance believed all of the available cash was not included. During the Meet and Confer process, the Agency submitted clarifying information that identified the $19,741 as housing income, and therefore belonging to the Housing Successor. With the submitted documentation, Finance has determined the beginning balance as of June 30, 2012 should be $343,680, as originally reported. Therefore, the adjustment of $19,741 is no longer necessary.

Furthermore, during the Meet and Confer process, the Agency stated that the incorrect version of the DDR was inadvertently transmitted to Finance. The Agency presented a revised LMIHF DDR, which requested to retain the $137,054 in unencumbered funds for obligations related to the Recognized Obligation Payment Schedule (ROPS) for the period January through June 2013. The Agency contends that unencumbered LMIHF are not limited to housing obligations.

However, Finance notes that neither AB x1 26 nor AB 1484 overrode HSC 33334.3 (c), which states the moneys in the LMIHF shall be used to increase, improve, and preserve the supply of low- and moderate-income housing. The Agency did not request any LMIHF funding on prior ROPS schedules, and therefore, per HSC 34177 (d), all unencumbered balances in the LMIHF must be remitted to the county auditor-controller for distribution to the taxing entities.

Additionally, the Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations.

It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances. Therefore the Agency's request to retain $137,054 in current unencumbered balances to cover future obligations is not allowed.

Should a deficit occur in the future, 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 subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

Consequently, the Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to $137,054 as originally reported in the DDR (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per DDR:	$	137,054
Finance Adjustments	$	-
Total LMIHF available to be distributed:	$	137,054

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 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.

Please direct inquiries to Nichelle Thomas, Supervisor or Alex Watt, Lead Analyst at (916) 445-1546.

Sincerely,

for

STEVE SZALAY
Local Government Consultant

cc: Ms. Kelsey Worthy, Assistant City Manager
Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office