March 27, 2013

Mr. Allen Jones, Deputy Chief of Staff
City of San Diego
202 C Street 11th Floor
San Diego, CA 92010

Dear Mr. Jones:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated January 7, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of San Diego Success 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 December 12, 2012. Finance issued a LMIHF DDR determination letter on January 7, 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 January 28, 2013. Based on extension requests from the Agency, Finance extended its normal thirty day Meet and Confer review period.

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.

- Total amount of assets held as of June 30, 2012 should be $332,684,464. The original beginning balance of the DDR was $292,851,855 in Procedure 5. During the Meet and Confer process, the Agency revised the beginning balance to $332,684,464 to account for $1,845,227 of non-low mod housing funds used to fund enforceable obligations, $474,519 that is held with the trustee for investment, $33,904,180 of accounts receivables from the City, $3,510,824 of deferred charges, and $97,859 of unrealized gain or loss. Finance will accept the revised balance as of June 30, 2012 as $332,684,464.

- Assets transferred to the City or other parties were originally stated at $62,569,993 in Procedure 2. During the Meet and Confer process, the Agency increased this amount by $41,112,541 to $103,682,534. The increase is mainly due to a transfer of $74,948,146 and the subsequent transfer back of $34,231,877.

  The Agency offset this amount by $63,772,155 in Procedure 6 to account for non-cash items such as land held for resale and capital assets. After further review, Finance determined that $1,202,162 in additional cash that was transferred to the City has been transferred back as a piece of land, La Fornara. The City is required to transfer cash back to the Agency as originally received. Therefore, OFA balances will be adjusted by $1,202,162.

- Assets legally restricted for uses specified by debt covenants were originally stated as $49,877,846 in Procedure 6. During the Meet and Confer process, Agency revised this amount to $104,111,924 to account for the unspent bond proceeds held with the City and being held in the reserve. In addition, the Agency provided additional support that $25,513,138 of the $41,112,541 of the transfer described in the second point above was for bond proceeds. Finance will accept the revised amount held as legally restricted to be $104,111,924.

- Assets that are not cash or cash equivalents were adjusted to $231,760,024 in the updated DDR. The original amount stated in Procedure 7 of the DDR was $193,456,672 for physical assets that cannot be distributed to the taxing entities. During the Meet and Confer process, Agency discovered an error in their accounting for physical assets. Therefore, Agency revised this amount to $231,760,024 to reflect the correct amount. Finance is not objecting to this adjustment.

- Balances requested to be retained under Procedure 8 were originally stated as $14,040,844. Finance originally denied this amount because Agency did not provide an analysis on the projection of annual revenues expected to be available in the future. During the Meet and Confer process, the Agency provided additional information including a projection of annual revenue and spending requirements. Agency has also reduced the requested retention amount to $2,316,877. However, the cash flow analysis does not indicate the Agency has an immediate need to retain the LMIHF for housing obligations or bond debt service payments. Therefore, Finance deems it not necessary for the Agency to retain the requested funds.

  However, should this adjustment cause a cash flow shortage for administrative expenses, HSC provides successor agencies with various methods to address short term cash flow issues. These may include refinancing debt pursuant to HSC section 34177.5 (a), requesting a loan from the city pursuant to HSC section 34173 (h), or accumulating reserves for future obligations when a future balloon or uneven payment is expected. The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation.

  Since the cash flow analysis does not fully support the immediate need to retain LMIHF balances and there are alternatives available to address potential short term cash flow issues, Finance deems it is not necessary for Agency to retain $2,316,877.

- Balances requested to be retained for fiscal year 2012-13 obligations were originally stated as $45,671,402. Finance originally denied this amount because Agency was requesting to retain the total of all outstanding obligations. During the Meet and Confer process, the Agency has revised their requested retention amount to $26,525,376. Of the $26,525,376, the Agency was able to show that $24,680,149 was requested from LMIHF ($2,377,093 in ROPS I, $8,386,944 in ROPS II, and $13,916,112 in ROPS III). Therefore, Finance approves the retention of $24,680,149 but continues to adjust for the remaining amount of $1,845,227.

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to $13,244,908 (see table below).

LMIHF Balances Available For Distribution To Taxing Entities		
Available Balance per revised DDR:	$	7,880,642
Finance Adjustments		
Add:		
Disallowed transfers	$	26,715,300
Noncash offset	$	(25,513,138)
Requested retained balance not supported:		
Retention for future enforceable obligations		2,316,877
Retention for 2012-13 fiscal year		1,845,227
Total LMIHF available to be distributed:	$	13,244,908

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. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

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 Asset Transfer letter dated January 4, 2013 do not in any way eliminate the Controller's authority.

Please direct inquiries to Wendy Griffe, Supervisor or Jenny DeAngelis, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Mr. Jeff Graham, President of Civic San Diego, City of San Diego
Mr. Andrew Phillips, Chief Financial Officer of Civic San Diego, City of San Diego
Mr. Juan Perez, Senior Auditor and Controller Manager, San Diego County
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California State Controller's Office