



December 15, 2012

Ms. Laura Rocha, Finance Director  
City of San Marcos  
1 Civic Center Dr.  
San Marcos, CA 92069

Dear Ms. Rocha:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF DDR determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the Successor Agency of the former San Marcos Redevelopment 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 12, 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 is revising some of the adjustments made in our previous DDR determination letter. Specifically, we are revising the following adjustment:

- The Agency contends the Residences at Creekside loan in the amount of \$5,882,980 is restricted. This item was denied by Finance in our letter dated August 30, 2012 as an inclusion to the Housing Asset Transfer Form and in the ROPS III letter dated October 10, 2012. The Agency requested a Meet and Confer regarding this item and met with Finance on November 28, 2012. Through the ROPS III Meet and Confer Process, the item was determined not to be enforceable at this time. However, the funding source for the denied item originated from bond proceeds. Since bond proceeds are considered restricted, they are not considered part of the unencumbered balance eligible for distribution to the taxing entities and has been adjusted accordingly.

However, Finance continues to believe some 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 reasons:

- The Agency contends the retention of current balances is necessary to pay for future obligations. Finance originally denied the Agency's request to retain \$14,544,518 due to a lack of evidence there would be insufficient property taxes to pay the specified obligations. During the Meet and Confer process, the Agency provided additional

information including a projection of annual revenue and spending requirements. Upon review of the additional information, Finance continues to believe the adjustment made is appropriate.

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 Agency has alternatives to address short term cash flow shortages should they occur, Finance deems it is not necessary for the Agency to retain the requested funds.

- Finance continues to adjust for the approved 2012-13 LMIHF expenditures identified on the ROPS in the amount of \$4.4 million

The Agency's LMIHF balance available for distribution to the affected taxing entities has been revised to \$8,997,735 (see table below).

<b>LMIHF Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ (1,181,783)
Finance Adjustments	
Add:	
Retained balances not supported:	14,544,518
Less:	
Balances needed to satisfy ROPS for the 2012-13 fiscal year:	(4,365,000)
<b>Total LMIHF available to be distributed:</b>	<b>\$ 8,997,735</b>

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 30, 2012 do not in any way eliminate the Controller's authority.

Please direct inquiries to Zachary Stacy, Manager or Derk Symons, Lead Analyst at (916) 445-1546.

Sincerely,



**STEVE SZALAY**  
Local Government Consultant

cc: Mr. Juan Perez, Senior Auditor and Controller Manager, County of San Diego  
California State Controller's Office