



FINAL REVISION

April 8, 2013

Ms. Susan Gorospe, Senior Management Analyst
Community Development Agency
City of Santa Ana
20 Civic Center Plaza, M-25
Santa Ana, CA 92701

Dear Ms. Gorospe:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes all of the California Department of Finance's (Finance) previous Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letters. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Santa Ana Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to 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 4, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, and based on further reviews and conversations that occurred after the Meet and Confer process, Finance believes some of our previous adjustments made to the DDR's stated balance of LMIHF available for distribution to the taxing entities should no longer be made. Specifically, we are reversing the following adjustment for the following reason:

- Finance originally disallowed the Agency's improper transfers to the Santa Ana Housing Authority (Housing Successor) on February 1, 2012, and adjusted the amount available by \$26,080,925. The Agency contends they believe they were authorized to transfer this funding to the Housing Successor pursuant to Finance's Recognized Obligation Payment Schedule (ROPS) I and II and Housing Asset Transfer approval letters. We maintain that the transfer was improper and we disagree with the Agency's contention that they were authorized to make these transfers pursuant to any letter issued by Finance. Additionally, it is very clear that the Agency has failed to follow the requirements laid out in statute with regards to obtaining appropriate expenditure authority for items that may have been enforceable obligations. The Agency's inattentive actions have led to developers being unable to receive payments for various projects that may have been determined to be enforceable obligations.

Nevertheless, it could have been construed that there was insufficient clarity in the ROPS I and II determination letters that may have led the Agency to conclude that certain transfers were allowed. Specifically, the funding requested to be retained is for four obligations whose payments have not been listed for payment from LMIHF, or even

vetted by Finance, through the ROPS process. However, a subsequent review of the items indicates they are enforceable obligations. Those obligations include the Santa Ana Station District, Habitat for Humanity, Vista Del Rio, and WBBB agreements, associated direct project costs, and a settlement agreement between Santa Ana Station District, the Community Redevelopment Agency of the City of Santa Ana, and the Friends of Lacy Historic Neighborhood (Station District Lacy Settlement). Therefore, based on further review, conversations, and information provided by the Agency, and in light of the previous lack of clarity, and in the interest of ensuring enforceable obligations are properly paid by the Agency, Finance is reversing \$23,061,123.54 of the \$26,080,925 adjustment. As a result, Finance revises that particular adjustment amount to \$2,580,847.46 (= \$26,080,925 - \$23,061,123.54 - \$438,954). The amount reversed in the adjustment includes amounts already expended/encumbered or that will be expended through June 30, 2013 for the Habitat for Humanity, Vista Del Rio, WBBB agreements, and the Station District Lacy Settlement totaling \$6,490,283.26, and \$600,840.28 already expended or that will be expended through June 30, 2013, for project management costs associated with the Habitat for Humanity, Vista Del Rio, WBBB, Santa Ana Station District agreements, and the Station District Lacy Settlement.

In addition, the amount reversed includes amounts already expended or that will be expended through June 30, 2013 for the Santa Ana Station District Disposition and Development Agreement (DDA). As it specifically relates to the Santa Ana Station District DDA and all implementation agreements required pursuant to the DDA and executed to date (e.g. the Promissory Notes, Deeds of Trust, and Subordination Agreements), the total funding commitment in the amount of \$15,570,000 for Phases R-1 and R-2 of the agreement is an enforceable obligation under Chapter 5, Statutes of 2011 (ABx1 26) and Chapter 26, Statutes of 2012 (AB 1484). Finance further believes that the developers of those phases of the Santa Ana Station District DDA are entitled to receive and draw down immediately from two escrow accounts \$4,762,823.84, which is the remaining balance of the total funding commitment for Phases R-1 and R-2 of the agreement. Finance notes that the \$15,570,000 total obligation mentioned is included as part of the reversed amount in the overall total adjustment in the paragraph above. In addition, the reversed amount includes \$400,000 that will be expended through June 30, 2013 for Phase FS of the Santa Ana Station District DDA.

Due to the reversed adjustments discussed above, the total obligation for the Santa Ana WBBB, Vista Del Rio, and Phases R1 and R2 of the Santa Ana Station District agreements should be completely paid. As a result, these obligations should not be placed on future ROPS.

The remaining amounts to be funded on the agreements discussed above and the associated project management costs after June 30, 2013, are excluded from the reversed portion of the adjustment. Any future amounts due pursuant to these agreements should be placed on a future ROPS. Although Finance acknowledges that the agreements noted above are enforceable obligations, Finance maintains the right to review the amounts due pursuant to HSC section 34177 (m), and approve or deny the ROPS items based on Finance's review of the information provided.

In regard to the Station District Lacy Settlement, pursuant to the settlement, on April 18, 2011, the Agency was required to establish a \$200,000 residential housing fund that it was required to maintain for five fiscal years beginning July 1, 2012. The maximum amount that the account is authorized to contain is \$200,000. If any amount is drawn

from the account, that amount should be replenished the following fiscal year up to the maximum \$200,000. Based on information provided by the Agency, the Agency did not fund the account during the first fiscal year, and thus, no amounts were drawn during the first fiscal year. As a result, the reversed portion of the adjustment includes \$200,000 for the funding of this account. However, there is no requirement for the Agency to continue to hold an additional \$600,000 identified by the Agency for the remaining years of the account's existence. As noted above, in each fiscal year of the account's existence the *maximum* amount that can be placed in the account is \$200,000. To the extent that funds are drawn in the future, the Agency's obligation to replenish the account should be placed on a future ROPS.

The Agency also identified \$438,954 as non-cash assets; the market value on investments in the amount of \$179,704 is not cash, and the Multi-Family Mortgage Backed Securities in the amount of \$259,250 is a housing revenue bond that does not mature until September 2031 and therefore currently unavailable. Finance has made the appropriate adjustments to reflect this information.

In addition, Finance continues to believe some of the other 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 following adjustment continues to be necessary for the following reasons:

- The Agency requested to retain balances needed to satisfy enforceable obligations through June 2013 in the amount of \$30,593,530. During the Meet and Confer process, the Agency stated that although the cash is currently unencumbered, it was received due to judgments, settlements, and agreements resulting from lawsuits against the former redevelopment agency, and therefore represent an enforceable obligation per HSC 34176 (e)(2).

Further, the Agency contends the retention of \$29,866,161 is necessary for anticipated housing obligations. However, Finance contends that these funds are not encumbered, which has been admitted to by the Agency to Finance, by existing contracts, and per HSC 34163 (a) an agency shall not have the authority to enter into contracts with, incur obligations, or make commitments to any entity, for any purpose, including agreements for redevelopment activities.

Additionally, the Agency requested to retain \$505,369 for direct project costs; however, these direct project costs have already been included in the \$26,080,925 that was transferred to the Housing Successor.

Finally, the Agency requested to retain \$222,000 for housing asset maintenance costs. These are administrative costs of the Housing Successor and not the obligation of the Agency.

The Agency's LMIHF revised balance available for distribution to the affected taxing entities is \$33,174,377 (see table below).

| LMIHF Balances Available For Distribution To Taxing Entities | |
|---|----------------------|
| Available Balance per DDR: | \$ - |
| Finance Adjustments | |
| Add: | |
| Disallowed transfers | \$ 2,580,847 |
| Unencumbered balances | \$ 30,593,530 |
| Total LMIHF available to be distributed: | \$ 33,174,377 |

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. On March 4, 2013, Finance sent a letter specifying the deadline for remittance of these sums.

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.

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 Form letter dated February 15, 2013 do not in any way eliminate the Controller's authority.

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: On following page

Ms. Susan Gorospe
April 8, 2013
Page 5

cc: Ms. Nancy Edwards, Interim Executive Director, Community Development Agency,
City of Santa Ana
Mr. Frank Davies, Property Tax Manager, Orange County
California State Controller's Office