DEPARTMENT OF FINANCE
CALIFORNIA

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REVISED

March 8, 2013

Ms. Hannah Chung, Finance Director
City of Tehachapi
115 S. Robinson Street
Tehachapi, CA 93561

Dear Ms. Chung:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance's original LMIHF Meet and Confer DDR determination letter dated February 6, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Tehachapi Successor 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 11, 2012. Finance issued a LMIHF DDR determination letter on January 4, 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 24, 2013.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, Finance continues to believe 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 $457,499 is needed to remedy a negative cash balance and to pay future bond debt service payments and administrative expenses. Exhibit D of the DDR included a fund shortage analysis indicating a cash shortage of RPTTF to pay future administrative expenses and bond debt service payments. Finance originally denied the Agency's request to retain $457,499 because the DDR fund shortage analysis indicated the Agency will have sufficient RPTTF in the subsequent ROPS period to pay the bond debt service payments. The Agency provided a revised fund shortage analysis; however, our analysis of this document did not result in a revision to our previous adjustment.

The Agency disagrees with Finance's determination and requests to retain current LMIHF balances to reimburse other Agency funds and the City for the past cash shortfall assistance. During the Meet and Confer process, the Agency stated historically the LMIHF fund typically contained a negative balance. The Agency then would replenish the LMIHF with tax increment distributions. After the passage of the redevelopment dissolution legislation, the Agency stated other Agency funds were transferred to the LMIHF and City funds were borrowed to cover the shortfall. However, reimbursement of other Agency funds is not an enforceable obligation, and the amount and funding source used to pay for enforceable obligations is limited to what was authorized by Finance on a Recognized Obligation Payment Schedule (ROPS). Further, supporting documentation was not provided to substantiate the City loan claims. HSC section 34173 (h) allows the City to loan the Agency money to cover enforceable obligations or administrative costs. The repayments of such loans can be placed on a future ROPS. Therefore, the Agency should memorialize these City loan(s) on a future ROPS.

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). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation.

Since the fund shortage 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 the requested funds. As such, the LMIHF available for distribution to the affected taxing entities continues to be adjusted by $457,499.

- The DDR did not reflect the need to retain LMIHF funds for approved fiscal year 2012-13 obligations, However, the Agency requested Finance adjust the balance to reflect these approved expenditures. LMIHF obligations totaling $261,952 were approved by Finance for fiscal year 2012-13. As such, Finance is adjusting the balance to reflect the $261,952 in approved expenditures.

The Agency's LMIHF balance available for distribution to the affected taxing entities continues to be $195,547 (see table below).

| LMIHF Balances Available For Distribution To Taxing Entities | | |
|---|---|---|
| Available Balance per DDR: | $ | - |
| Finance Adjustments | | |
| Add: | | |
| Requested retained balance not supported: | $ | 457,499 |
| Approved LMIHIF expenditures for ROPS III: | | (261,952) |
| **Total LMIHF available to be distributed:** | $ | 195,547 |

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 Kylie Le, Supervisor or Brian Dunham, Lead Analyst at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc: Ms. Daisy Wee, Accounting Officer, City of Tehachapi
Mr. Ed Grimes, Chairman, City of Tehachapi Successor Agency Oversight Board
Ms. Ann K. Barnett, Kern County Auditor-Controller
California State Controller's Office