

City of San Leandro
Civic Center, 835 E. 14th Street
San Leandro, California 94577



Office of the City Manager 510-577-3351
FAX 510-577-3340

January 2, 2012

Mr. Steve Szalay
Local Government Consultant
Department of Finance
State of California
915 L Street, 11th Floor
Sacramento, CA 95814-3706

SENT VIA EMAIL

**Re: Low and Moderate Income Housing Fund Due Diligence Review and ROPS
3 Determination – Successor Agency to the Redevelopment Agency of the City
of San Leandro**

Dear Mr. Szalay:

This letter is provided in response to (1) the Department of Finance's ("DOF") final determination letter dated December 8, 2012 (the "**Final LMIHF Determination Letter**") regarding the low and moderate income housing fund due diligence review (the "**LMIHF DDR**") for the Successor Agency to the Redevelopment Agency of the City of San Leandro (the "**Successor Agency**"), and (2) the DOF's determination letter dated December 18, 2012 (the "**ROPS 3 Letter**") regarding the denial of payment of certain enforceable obligations by the Successor Agency on its third recognized obligation payment schedule ("**ROPS 3**").

Pursuant to Health & Safety Code § 34179.6(c)¹, the Successor Agency submitted an oversight board approved LMIHF DDR to the DOF on October 12, 2012. The DOF issued its initial determination on the LMIHF DDR on November 7, 2012 (the "**Original LMIHF Determination Letter**"). As discussed in the Original LMIHF Determination Letter, the DOF made unsubstantiated adjustments to the LMIHF DDR balance and concluded that the Successor Agency's low- and moderate-income housing fund balance available for distribution to the taxing entities is \$3,923,774.

¹ All section references are to the Health and Safety Code unless otherwise indicated.



Upon receipt of the Original LMIHF Determination Letter, the Successor Agency requested, and on November 30, 2012, a meet and confer session was held with the DOF to discuss and dispute items adjusted in the DOF's Original LMIHF Determination Letter. The November 30, 2012 meeting was also a joint meet and confer session for both the LMIHF DDR and for enforceable obligations disapproved by the DOF pursuant to its initial ROPS 3 determination. The DOF issued the Final LMIHF Determination Letter after review of the additional information provided in the meet and confer session. By its terms, the Final LMIHF Determination Letter supersedes the Original LMIHF Determination Letter. As outlined in the Final LMIHF Determination Letter, the DOF continues to maintain that the original adjustments made to the LMIHF DDR are conclusive, and the DOF demands that the Successor Agency transmit \$3,923,774 to the County auditor-controller within five working days.

The Successor Agency disagrees with the DOF's final determination that any adjustments should be made to the low- and moderate-income housing fund and disagrees that the Successor Agency has a balance available for distribution to the taxing entities of \$3,923,774. The entire balance of \$3,923,774 that was available in the low- and moderate-income housing fund as of June 30, 2012 (as described in the LMIHF DDR) is contractually obligated to BRIDGE Housing under an Owner Participation and Loan Agreement between an affiliate of BRIDGE and the former redevelopment agency (the "**BRIDGE Agreement**"). As a result, such balances are not available for distribution to the taxing entities, and must be retained by the Successor Agency to pay enforceable obligations. (See Section 34179.6(c).)

The BRIDGE Agreement was approved by the DOF in the first and second recognized obligation payment schedules ("**ROPS 1 and ROPS 2**") that were submitted to the DOF by the Successor Agency as required under Section 34177(l). On October 19, 2012, the DOF initially denied funding the BRIDGE Agreement as an enforceable obligation because the construction/permanent loan was not yet secured by a promissory note and evidenced by a leasehold deed of trust. As explained by Successor Agency staff during the meet and confer process, there are certain conditions that need to be met under the BRIDGE Agreement prior to executing the note and deed of trust. In its ROPS 3 Letter and its Final LMIHF Determination Letter, while the DOF maintains that the balance available for distribution to the affected taxing entities remains at \$3,923,774, the DOF posits a different rationale than it previously offered in the December 19, 2012 letter. The DOF now maintains that the BRIDGE Agreement is an enforceable obligation, but the Successor Agency did not adequately demonstrate a need for funds during the ROPS 3 period. The ROPS 3 Letter offers a new basis for denying the Successor Agency's request to retain funds – a basis not previously discussed or disclosed to the Successor Agency – and the Successor Agency was never afforded the opportunity to meet and confer with the DOF on its new determination

The conclusions drawn in the ROPS 3 Letter and the Final are flawed as they contain incorrect interpretations of applicable law. Under Section 34175(a) enforceable obligations are to be honored and the cessation of any redevelopment agency shall not affect the pledge,

or legal existence of that pledge, or stream of revenues available to meet the requirements of the pledge.

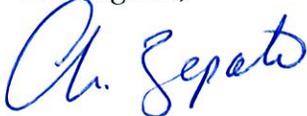
Consequently, the Successor Agency is hereby declining to transfer the remaining \$3,923,774 from the low- and moderate-income housing fund because transfer of the funds will make it impossible for the Successor Agency to meet its legal obligations under the BRIDGE Agreement. The Successor Agency asserts that the penalties, interest or other remedies provided in Section 34179.6(h) shall neither accrue nor apply given that the BRIDGE Agreement is an enforceable obligation under the law. The Successor Agency requests that the DOF acknowledge that it will stand down from imposing any penalties, interest or other remedies provided in Section 34179.6(h), pending further discussion with the Successor Agency on this issue.

Notwithstanding the forgoing request for the DOF to consider agreeing to discuss payment of installment payments pursuant to Health & Safety Code § 34179.6(h)(3), the Successor Agency expressly reserves any and all rights, privileges, and defenses available under law and equity to continue to challenge the final amounts determined by the DOF as due pursuant to the LMIHF DDR review, including, but not limited to filing a legal action against the DOF.

Lastly, the Successor Agency must address the DOF threat of criminal penalties, as set forth in the Final LMIHF Determination Letter, based upon a “willful failure to return assets deemed an unallowable transfer or failure to remit the funds.” As you are aware, under Rule 5-100 of the California Rules of Professional Conduct, it is unethical for the State Attorney General to initiate any criminal prosecution in an attempt to obtain an advantage in what is clearly a civil dispute. Furthermore, Penal Code section 518 prohibits the use of force or fear, under color of official right, to obtain property from another.

We appreciate your attention to these matters and welcome further discussion of the issues expressed herein. If you have any questions, please don't hesitate to contact me or contact Jeff Kay at (510) 577-3319.

Best regards,



Chris Zapata
City Manager

c: Mayor Stephen Cassidy and City Council
Lianne Marshall, Assistant City Manager
Jayne Williams, City Attorney
Alameda County Auditor-Controller