



April 4, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period July 1, 2016 through June 30, 2017 (ROPS 16-17) to the California Department of Finance (Finance) on January 26, 2016. Finance has completed its review of the ROPS 16-17.

Based on a sample of line items reviewed and application of the law, Finance made the following determinations:

- Item No. 6 – Claimed administrative costs exceed the allowance by \$226,930. HSC section 34171 (b) (3) limits the fiscal year 2016-17 Administrative Cost Allowance (ACA) to three percent of actual distributed Redevelopment Property Tax Trust Fund (RPTTF) in the preceding fiscal year or \$250,000, whichever is greater; not to exceed 50 percent of the distributed RPTTF in the preceding fiscal year. As a result, the Agency's maximum ACA is \$1,794,454 for the fiscal year 2016-17. Although \$2,021,384 is claimed for administrative cost, only \$1,794,454 is available pursuant to the cap. Therefore, \$226,930 of excess administrative cost is not allowed.
- Item No. 207 – 9451 MacArthur Blvd-Evelyn Rose Project in the total outstanding amount of \$517,500 is not approved. Finance continues to deny this item. This item was denied during the January through June 2013 (ROPS III) period because Low and Moderate Income Housing Fund (LMIHF) deferral payments were not eligible for repayment. The Agency now contends the item is not a LMIHF deferral payment, and explained repayment to LMIHF is required because the former redevelopment agency (RDA) expended LMIHF funds on an affordable housing project located at 9451 MacArthur Boulevard, which was never completed. The RDA ultimately sold the property to another developer in 2002 for development of non-affordable housing. The Agency contends that due to the removal of the affordable housing covenant tied to the property, the Agency is required to pay back LMIHF funds used. The Agency has not provided sufficient documentation to support requirement to repay the LMIHF. Therefore, the requested RPTTF in the amount of \$517,500 is not approved.

- Item No. 370 – Low and Moderate Income Housing Project management cost in amount of \$1,620,828 is partially approved. The Agency provided a breakdown of how the total requested amount was allocated to housing projects listed on ROPS 16-17. Of the requested amount, a total of \$734,850 was related to the Oak to 9th Project (Brooklyn Basin) under Item No. 423. As noted in the bullet below, Item No. 423 is not an enforceable obligation. Therefore, the related project development costs are also not an enforceable obligation of the Agency. As a result, of the requested \$1,620,828, the amount of \$734,850 is not eligible for RPTTF funding.
- Item No. 423 – Oak to 9th Project (Brooklyn Basin) is not an enforceable obligation of the Agency. The Cooperation Agreement dated August 24, 2006 between the former RDA and the Oak to Ninth Community Benefits Coalition did not require the RDA to provide additional funding beyond the enforceable obligation to purchase the Affordable Housing Parcels pursuant to the Development Agreement dated August 24, 2006 between the RDA and Oakland Harbor Partners, LLC. The Agency fulfilled its only enforceable obligation when it acquired the parcels during the July 1, 2014 through December 30, 2014 ROPS period under Item No. 422 using 2011 housing bond proceeds. Therefore, the development of affordable housing units is not an enforceable obligation of the Agency as defined in HSC section 34171 (d). As such, the additional funding requested in the amount of \$4,000,000 in RPTTF is not approved.

We note that the Agency is requesting re-authorization to use \$2,545,000 in excess bond proceeds, which were approved on a previous ROPS. The Agency received a Finding of Completion on May 29, 2013 and is allowed to expend bond proceeds derived from bonds issued prior to January 1, 2011 (pre-2011 bond proceeds) and housing bonds issued prior to June 28, 2011 in a manner consistent with the bond covenants. Such expenditures constitute the creation of an “excess bond proceeds obligation” payable from available excess bond proceeds. Additionally, during ROPS 15-16B, Agency staff acknowledged the Agency’s use of bond proceeds was pursuant to recent Senate Bill 107 changes. As such, Finance approved bond funding for pre-development costs of the affordable housing units in accordance with HSC section 34176 (g), not because the item was an enforceable obligation. Finance is re-authorizing the Agency’s request to use \$2,545,000 in excess housing bond proceeds in accordance with HSC section 34176 (g), as the funds may not have been expended.

Additionally, Finance notes the Agency was authorized to transfer approximately \$96,000,000 to the City of Oakland (City) pursuant to a bond expenditure agreement. To the extent there are excess pre-2011 bond proceeds and/or 2011 housing bond proceeds, the City and/or Agency may choose to use such proceeds to fund Item No. 423; and if necessary, repurpose available excess bond proceeds for the Oak to 9th Project. Should the Agency desire to increase the amount of excess bond proceeds for Item No. 423, a Meet and Confer should be requested to obtain authorization to expend additional excess bond proceeds.

Finally, our approval is specifically limited to the use of excess pre-2011 bond proceeds pursuant to HSC section 34191.4 (c) (1) and excess housing bond proceeds pursuant to HSC section 34176 (g). Such approval should not be construed as approval of the project itself as an enforceable obligation. Therefore, we have changed the Obligation Type from “OPA/DDA/Construction” to “Bond Funded Project – Housing”.

- Item No. 426 – West Oakland Loan Indebtedness in the total outstanding amount of \$2,717,524 is not approved. Pursuant to HSC section 34191.4 (b) (3), interest on the remaining principal amount of the loan that was previously unpaid after the original effective date of the loan shall be recalculated from the date of origination of the loan on a quarterly basis, at a simple interest rate of three percent and repayments shall be applied first to principal, and second to interest.

The Agency provided Oversight Board Resolution No. 2013-16, which found the loan was for legitimate redevelopment purposes. It is our understanding the RDA was to repay the City of Oakland (City) for costs incurred totaling \$2,689,535 for various projects in the West Oakland project area. Although a 2011 Funding Agreement was provided, the Agency was unable to provide sufficient financial documentation to support the current outstanding principal amount owed. As a result, Finance could not determine if the Agency's reported total outstanding balance was accurate and if the requested \$1,813,238 for the ROPS 16-17 period exceeded the balance owed. Therefore, this item is not eligible for RPTTF funding at this time.

Except for the items denied in whole or in part or reclassified, Finance is not objecting to the remaining items listed on your ROPS 16-17. If you disagree with Finance's determination with respect to any items on your ROPS 16-17, except for those items which are the subject of litigation disputing Finance's previous or related determinations, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

http://www.dof.ca.gov/redevelopment/meet_and_confer/

On the ROPS 16-17 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. Finance performs a review of the Agency's self-reported cash balances on an ongoing basis. Be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved enforceable obligations, HSC section 34177 (I) (1) (E) requires these balances to be used prior to requesting RPTTF.

The Agency's maximum approved RPTTF distribution for the reporting period is \$62,108,332 as summarized in the Approved RPTTF Distribution table on page 5 (See Attachment).

ROPS distributions will occur twice annually, one distribution for the July 1, 2016 through December 31, 2016 (ROPS A period), and one distribution for the January 1, 2017 through June 30, 2017 (ROPS B period) based on Finance's approved amounts. Since Finance's determination is for the entire ROPS 16-17 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 16-17 form, the Agency was not required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2015 through December 31, 2015 period (ROPS 15-16A). The Agency will report actual payments for ROPS 15-16A and ROPS 15-16B on the ROPS 18-19 form pursuant to HSC section 34186 (a) (1). A prior period adjustment will be applied to the Agency's future RPTTF distribution. Therefore, the Agency should retain any difference in unexpended RPTTF.

Please refer to the ROPS 16-17 schedule used to calculate the total RPTTF approved for distribution:

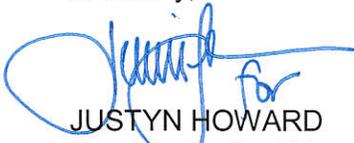
<http://www.dof.ca.gov/redevelopment/ROPS>

Absent a Meet and Confer, this is Finance's determination related to the enforceable obligations reported on your ROPS for the period July 1, 2016 through June 30, 2017. This determination only applies to items when funding was requested for the 12-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of the redevelopment dissolution statutes. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

Attachment

Approved RPTTF Distribution			
For the period of July 2016 through June 2017			
	<u>ROPS A Period</u>	<u>ROPS B Period</u>	<u>Total</u>
Requested RPTTF (excluding administrative obligations)	\$ 19,342,195	\$ 48,037,270	\$ 67,379,465
Requested Administrative RPTTF	580,266	1,441,118	2,021,384
Total RPTTF requested for obligations on ROPS 16-17	19,922,461	49,478,388	\$ 69,400,849
Total RPTTF requested	19,342,195	48,037,270	67,379,465
Denied Items			
Item No. 207	(517,500)	0	(517,500)
Item No. 370	(367,425)	(367,425)	(734,850)
Item No. 423	(2,000,000)	(2,000,000)	(4,000,000)
Item No. 426	(906,619)	(906,618)	(1,813,237)
	<u>(3,791,544)</u>	<u>(3,274,043)</u>	<u>(7,065,587)</u>
Total RPTTF authorized	15,550,651	44,763,227	\$ 60,313,878
Total Administrative RPTTF requested	580,266	1,441,118	2,021,384
Administrative costs in excess of the cap (see Administrative Cost Allowance Cap table below)	0	(226,930)	(226,930)
Total Administrative RPTTF authorized	580,266	1,214,188	\$ 1,794,454
Total RPTTF approved for distribution	16,130,917	45,977,415	\$ 62,108,332

Administrative Cost Allowance Cap Calculation	
Actual RPTTF distributed for fiscal year 2015-16	\$ 61,084,234
Less sponsoring entity loan and Administrative RPTTF	1,269,106
Actual RPTTF distributed for 2015-16 after adjustment	59,815,128
Administrative Cap for 2016-17 per HSC section 34171 (b)	1,794,454
ROPS 16-17 Administrative RPTTF after Finance adjustments	2,021,384
Administrative Cost Allowance in excess of the cap	\$ (226,930)

April 4, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: Request for Final and Conclusive Determination

On February 11, 2016, the California Department of Finance (Finance) received the City of Oakland Successor Agency's request for a final and conclusive determination on Item No. 423 – Oak to Ninth project (Brooklyn Basin), as listed on the Recognized Obligation Payment Schedule for the January 1, 2016 through June 30, 2016 (ROPS15-16B) period.

Pursuant to HSC section 34177.5 (i), "If [1] an *enforceable obligation* provides for [2] an *irrevocable commitment of revenue* and where allocation of such revenues is expected to occur over time, the successor agency may petition [Finance] to provide written confirmation that its determination of such enforceable obligation as approved in a ROPS is final and conclusive, and reflects Finance's approval of subsequent payments made pursuant to the enforceable obligation."

Finance has completed its review of your request, which may have included obtaining clarification on items provided or additional supporting documentation. Based on our review, Item No. 423 does not qualify for a final and conclusive determination. Specifically:

1. The Cooperation Agreement dated August 24, 2006 between the former Redevelopment Agency (RDA) and the Oak to Ninth Community Benefits Coalition did not require the RDA to provide additional funding beyond the enforceable obligation referenced in section B of the Recitals to purchase the Affordable Housing Parcels pursuant to the Development Agreement dated August 24, 2006 between the RDA and Oakland Harbor Partners, LLC. The Agency fulfilled its obligation to acquire the parcels during the July 1, 2014 through December 30, 2014 ROPS period (ROPS 14-15A) under Item No. 422 with the use of 2011 housing bond proceeds. Although the Agency has other responsibilities such as ensuring affordability restrictions, project unit type restrictions, and project development/schedule, there is not a requirement to *provide funding* for the development of the Affordable Housing Parcels.

Furthermore, Section II G of the Cooperation Agreement states that the Agency shall reserve any funds deposited into the Agency's Low and Moderate Income Housing Fund (LMIHF) from tax increment revenues generated by the Oak to Ninth Project for the development of the Affordable Housing Projects. However, dissolution law discontinued

the existence of the LMIHF; and therefore, any such requirement to deposit future funds into the LMIHF no longer exists.

Consequently, the development of affordable housing units is not an enforceable obligation, as defined in HSC 34171 (d), of the Agency

2. The Cooperation Agreement referenced above does not specify an irrevocable funding commitment to the Oak to Ninth Project. The Cooperation Agreement includes specific language that the governing body of the Agency may determine the project is not economically feasible if financing for the project is not adequate and, as noted above, available LMIHF funding is zero, and will always be zero. Therefore, there is not an irrevocable commitment of revenue as required by HSC 34177.5 (i).

As describe above, development of the affordable housing units is not an enforceable obligation of the Agency, and there is no irrevocable commitment of revenues. Therefore, Item No. 423 – Oak to Ninth Project does not qualify for a final and conclusive determination.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst, at (916) 445-1546.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County



MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m) and (o).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

Successor Agency Housing Entity

AGENCY NAME: Oakland Redevelopment Successor Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers Due Diligence Reviews ROPS Period 16-17

DATE OF FINANCE’S DETERMINATION LETTER: April 4, 2016

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

Meeting at Finance Conference Call Combination Meeting/Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) (*List only the item number and description from the ROPS*)

1. Item No. 426 – West Oakland Loan Indebtedness totaling \$2,717,524
(ROPS 16-17 request of 1,813,238)
2. Item No. 423 – Oak to 9th (Brooklyn Basin) totaling \$4,000,000
3. Item No. 370 -- Low & Moderate Income Housing Project Management costs totaling \$734,850
4. Item No. 207 – 9451 MacArthur Blvd- Evelyn Rose Project totaling \$517,500

5. Background/History (*Provide relevant background/history, if applicable.*)

Please see attached.

6. Justification (*Must be specific and include attachments/documentation to support the Agency's position. Please tie each attachment to the specific line item listed above that it supports.*)

Please see attached.

Agency Contact Information

Name:	Sarah T. Schlenk	Name:	Norma Thompson
Title:	Agency Admin Manager	Title:	Housing Development Manager
Phone:	510-238-3982	Phone:	510-238-7137
Email:	sschlenk@oaklandnet.com	Email:	nthompson@oaklandnet.com

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: _____ APPROVED ___ DENIED ___

REQUEST APPROVED/DENIED BY: _____ DATE: _____

MEET AND CONFER DATE/TIME/LOCATION: _____

MEET AND CONFER SESSION CONFIRMED: ___ YES DATE CONFIRMED: _____

DENIAL NOTICE PROVIDED: ___ YES DATE AGENCY NOTIFIED: _____

Form DF-MC (Revised 10/14/2015)

1. ROPS line #426: The Oakland Redevelopment Successor Agency (“ORSA” or “Agency”) is appealing the Department’s disallowance of the West Oakland Loan Indebtedness totaling \$2,717,524 with a ROPS 16-17 RPTTF request of \$1,813,238.

BACKGROUND:

ORSA received its Finding of Completion on May 29, 2013. On July 29, 2013, the Oakland Oversight Board approved Resolution No. 2013-016, which found that the West Oakland loan was an enforceable obligation, found that the loan was made for legitimate redevelopment purposes, and approved a loan repayment schedule. The staff report to the Oversight Board detailed all the uses of loan funds. On August 1, 2013, the Department of Finance (Department) responded via email that it would not be initiating a review of OB Resolution No. 2013-016.

JUSTIFICATION:

In response to the Department’s concerns raised in the April 4th letter:

- 1) Per HSC Section 34191.4(b)(3), if interest on the remaining principal amount of the loan needs to be recalculated, ORSA is prepared to do so; however, please note that the amount requested during ROPS 16-17 is less than the outstanding principal amount of \$2.69 million. This requested amount should be payable regardless of the final calculation of interest.
- 2) The Department indicated that ORSA failed to provide adequate financial documentation of the current outstanding principal amount owed. As discussed with the analyst during the ROPS review, please see *Exhibit 1*, which provides a trial balance showing the principal amount of the loan as an outstanding loan receivable (account #12211) per Agency Resolution 2013-024 and Oversight Board Resolution 2013-16. Please note, the receivable for the West Oakland Capital Fund (5660) accounts for 80 percent of the loan principal per the statute for loan repayments, while the 20 percent balance is payable to the the Low and Moderate Income Housing Asset Fund.

Additionally, *Exhibit 2* provides a summary of actual expenditures of loan proceeds, by project, year to date, that provides the status consistent with the list of projects to be funded with the proceeds of the \$2.69 million loan.

2. ROPS line #423: ORSA is appealing the Department's disallowance of funding for the Oak to Ninth (now known as Brooklyn Basin) affordable housing totaling \$4,000,000 for the ROPS 16-17 period.

BACKGROUND:

Please refer to the Agency's Final and Conclusive (F&C) request on ROPS line #423 for an extensive background on the Brooklyn Basin project.

JUSTIFICATION:

In response to the Department's concerns raised in the April 4th F&C letter:

- 1) The Department states that the Cooperation Agreement does not require the Agency to provide any additional funding beyond the purchase of the affordable housing parcels.

The Cooperation Agreement does in fact provide for Agency funding of vertical development of affordable units on the affordable housing parcels, and is not limited to Agency funding of the purchase of the parcels. Sections II.D provides that "The Agency **shall cause** the commencement of **construction** of the Affordable Housing Projects on the Affordable Housing Parcels, subject to economic feasibility as defined below, no later than the following dates:", followed by a construction schedule for the project phases. Section II.E references the use of Agency funding sources to make project construction feasible, including bond proceeds, tax increment revenue from the Central City East redevelopment project area, and low and moderate income housing funds. Section II.G provides for the Agency to reserve a portion of tax increment funds generated by the market-rate project "for the **development** of the Affordable Housing Projects, retaining such funds on an ongoing basis in an effort to make **development** of the Affordable Housing Projects economically feasible."

- 2) The Department asserts that the Dissolution law discontinued the existence of the LMIHF; and therefore, any requirement to deposit funds into the LMIHF no longer exists.

This position is inconsistent with the Department's policy and practice of recognizing redevelopment agencies' contractual pledges of rebates or set-asides of tax increment revenue despite the fact that "tax increment" no longer exists. The pledge of funds in the Cooperation Agreement was intended by the parties to reserve a certain portion of "tax increment" revenues generated by the market-rate portions of the project for affordable housing development, and that pledge cannot be escaped simply because these revenues are no longer deposited into a fund called the "Low and Moderate Income Housing Fund." Every contract has an implied covenant of good faith and fair dealing, and it would not be good faith for a party to disregard its pledge simply due to semantics. The term "tax increment" is generally understood to be the

incremental increase in property tax revenue generated within a particular geographic area over a period of time. That is the way in which this term is used in the Cooperative Agreement – as a measure of the amount of property tax revenue that would be made available for the affordable housing.

- 3) The Department contends that the Cooperation Agreement does not specify an irrevocable funding commitment as it includes specific language that the Agency may make findings that the project is not economically feasible. The letter states that since LMHF available funding is zero, there is no irrevocable commitment of revenue required for a Final and Conclusive determination.

The Cooperation Agreement does in fact commit funds to project development, as noted above. This commitment is not freely revocable by the Agency in the Agency's own discretion; the Agency would be relieved of its funding commitment only if adequate financing sources are not available and the project as a result is economically infeasible. As the final and conclusive petition demonstrates, the affordable housing project would in fact be economically feasible if the redevelopment funds pledged to the project under the Cooperation Agreement were available. The Department's determination could cause the Agency to breach its obligations under the Cooperative Agreement.

3. ROPS line #370: ORSA is appealing the Department's disallowance of funding for Low and Moderate Income Housing Project Management costs totaling \$734,850, which is required to support the Brooklyn Basin (ROPS line #423) affordable housing development.

BACKGROUND:

During the ROPS review process, ORSA provided the Department with a breakdown of Low and Moderate Income Housing Project Management costs that were allocated to Housing projects listed on ROPS 16-17. The Brooklyn Basin development is a large and complex project that requires substantial project management support. Much of this effort is required for predevelopment activities. The total amount of Low and Moderate Income Housing Project Management costs allocated to ROPS line #423 is \$734,850, which represents approximately 3.81 full time equivalent (FTE) positions.

JUSTIFICATION:

ORSA contends that ROPS line #423 is an enforceable obligation, therefore the Low and Moderate Income Housing Project Management costs totaling \$734,850 of RPTTF funding should be restored.

Furthermore, the Department's response to ORSA's F&C petition on ROPS line #423 recognized that the "Agency has other responsibilities such as ensuring affordability restrictions, project unit type restrictions and project development/schedule...". These are all activities that require intensive project management support regardless of the ultimate outcome of ROPS line #423.

4. ROPS line #207: ORSA is appealing the Department's disallowance of funding for the 9451 MacArthur Blvd.-Evelyn Rose Project totaling \$517,500.

BACKGROUND:

This site was purchased with Low and Moderate Income Housing Funds (LMIHF) in the mid 1980's. The City worked with an affordable developer and expended over \$1 million of LMIHF on predevelopment for an affordable housing development. The Redevelopment Agency later determined that the proposed affordable development was not going to proceed, and therefore under the CRL, the Agency was required to reimburse the LMIHF for the affordable housing funds it had expended on the project. A total reimbursement amount was determined with the methodology detailed in a report provided to the Department. The fair market value of the property was only \$500,500. Once the property was sold to a developer for a market rate housing development, CCE Redevelopment Project area general tax increment funds were to reimburse the LMIHF for the outstanding \$517,500 in funds expended on the project beyond the purchase price of the property. These funds were still owed to the LMIHF at the time of dissolution and continue to be owed.

JUSTIFICATION:

The April 4th letter denied this item due to insufficient documentation of the requirement to repay the LMIHF. A trial balance was provided showing the amount remains outstanding in the Agency's financial system. Health and Safety Code Section 34171(d)(1)(G) provides that payments owing to the Low and Moderate Income Housing Fund are enforceable obligations and are payable to the LMIHF of the housing successor.

Exhibit 1

Page 1 Font Size 10

Oakland Operating Summary Trial Balance Report Date: 11-APR-2016 15:23
Period: P10-16 Page: 1 of 1

Currency: USD
 Balance Type: Year to Date
 FUND Range: 5660 to 5660

FUND: 5660 West Oakland Projects

ACCOUNT	Description	Beginning Balance	Debits	Credits	Ending Balance
11311	Cash Held by Treasury: City Poo	(1,293,278.75)	80,062.83	69,908.53	(1,283,124.45)
11313	Cash In Bank: GASB Adjustments	(349.44)	349.44	0.00	0.00
11317	Cash Adjustment for Interest Ac	1,248.12	0.00	1,248.12	0.00
12113	Receivable: Grants Receivable	79,133.72	0.00	79,133.72	0.00
12211	Due from: Oakland Redevelopment	0.00	2,163,797.60	0.00	2,163,797.60
12411	Interest Receivable: Investment	(1,248.12)	1,248.12	0.00	0.00
21111	Accounts Payable: General	(30,000.00)	39,015.00	9,015.00	0.00
21511	Accrued: Payroll	0.00	27,787.00	27,787.00	0.00
24111	Deferred: Loan Revenues	0.00	0.00	2,163,797.60	(2,163,797.60)
33221	Unreserved Fund Balance: Undesi	1,244,494.47	91,935.86	91,935.86	1,244,494.47
44112	Interest: Investments	0.00	3,106.53	929.11	2,177.42
47111	Internal Service Revenues	0.00	79,133.72	79,133.72	0.00
48316	Unrealized Gain/Loss in Market	0.00	0.00	349.44	(349.44)
51111	Civilian: Regular	0.00	9,147.92	0.00	9,147.92
51420	License	0.00	77.74	0.00	77.74
51511	Civilian: Paid Leave Charge	0.00	2,094.86	0.00	2,094.86
51611	Civilian: Retirement Accrual	0.00	3,691.71	0.00	3,691.71
51613	Civilian: Fringe Benefits Accru	0.00	4,329.98	0.00	4,329.98
52911	Bottled Water and Food for Huma	0.00	1,000.00	0.00	1,000.00
53219	Rental: Miscellaneous	0.00	560.00	0.00	560.00
54411	Architectural and Engineering S	0.00	4,455.00	0.00	4,455.00
54912	Third Party: Grant Contracts Ea	0.00	3,000.00	0.00	3,000.00
58521	Overhead: Departmental Cost All	0.00	2,125.14	0.00	2,125.14
58522	Overhead: Central Services Cost	0.00	3,064.53	0.00	3,064.53
58523	Overhead: Division Cost Allocat	0.00	3,255.12	0.00	3,255.12
		0.00	2,523,238.10	2,523,238.10	0.00

Go To... First Previous Next Last

Fund West Oakland Capital Fund (5660)

Sum of Ytd Balance SUM		Actuals for each Fiscal Year					Project to Date	Available Budget
Project	Proj Desc	FY12	FY13	FY14	FY15	FY16 (YTD)	Grand Total	(to be expended)
C346110	Encamp&Dump WOak	7,500.00	37,500.00	0.00	0.00	0.00	45,000.00	5,000.00
C365310	DIST 3 TEEN CTR	23,726.18	1,819,917.05	669.00	0.00	0.00	1,844,312.23	16,591.77
G313170	7TH ST. PHASE II	0.00	138,045.29	98,855.61	58,661.15	22,712.53	318,274.58	13,725.42
P441210	DUMPG APPRHS SYS7780	17,979.29	14,066.72	0.00	0.00	0.00	32,046.01	0.00
P441310	SAN PABLO KOB7780	0.00	4,999.50	0.00	0.00	0.00	4,999.50	0.00
P441410	ST ANDREWS PARK 7780	0.00	0.00	0.00	30,000.00	9,015.00	39,015.00	35,985.00
P441510	SAN PBLO STTREES7780	0.00	54,921.00	18,375.00	0.00	0.00	73,296.00	0.00
P442410	716 PERALTA BIKE7780	3,450.00	0.00	0.00	0.00	0.00	3,450.00	0.00
T288410	WEST OAK FACADE IP	17,500.00	60,000.00	0.00	0.00	0.00	77,500.00	0.00
T288510	WEST OAK TIP	45,000.00	0.00	0.00	0.00	0.00	45,000.00	0.00
T442010	New Crucible	45,283.00	12,417.00	0.00	0.00	0.00	57,700.00	0.00
T442210	PERALTA LIGHTING9590	2,638.00	0.00	0.00	0.00	0.00	2,638.00	0.00
T442310	MURAL PROJECT	55,000.00	20,000.00	0.00	0.00	0.00	75,000.00	0.00
Grand Total		218,076.47	2,161,866.56	117,899.61	88,661.15	31,727.53	2,618,231.32	71,302.19



Revised

May 19, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

Dear Ms. Schlenk:

Subject: 2016-17 Annual Recognized Obligation Payment Schedule

This letter supersedes the California Department of Finance's (Finance) Recognized Obligation Payment Schedule (ROPS) letters dated April 4, 2016, and May 17, 2016. Pursuant to Health and Safety Code (HSC) section 34177 (o) (1), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule for the period of July 1, 2016 through June 30, 2017 (ROPS 16-17) to Finance on January 26, 2016. Finance issued a ROPS determination letter on April 4, 2016. Subsequently, the Agency requested a Meet and Confer session on one or more of the determinations made by Finance. The Meet and Confer session was held on April 21, 2016. Subsequent to the issuance of the May 17, 2016 letter, the Agency requested to decrease the amounts for Item Nos. 421 and 422.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific determinations being disputed.

- Item No. 207 – 9451 MacArthur Blvd-Evelyn Rose Project in the total outstanding amount of \$517,500. Finance continues to deny this item. During the initial review the Agency contended that the repayment to the Low and Moderate Income Housing Fund (LMIHF) is required because the former redevelopment agency (RDA) expended LMIHF funds on an affordable housing project located at 9451 MacArthur Boulevard, which was never completed. The former RDA ultimately sold the property to another developer in 2002 for development of non-affordable housing. Furthermore, the Agency contended that due to the removal of the affordable housing covenant tied to the property, the Agency is required to pay back the LMIHF funds used. However, Finance initially denied this item because the Agency did not provide sufficient documentation to support requirement to repay the LMIHF.

During the Meet and Confer process, the Agency contended that HSC section 34171 (d) (1) (G) provides that payments owing to the LMIHF are enforceable obligations and are payable to the LMIHF of the housing successor. However, HSC section 34171 (d) (1) (G) specifically limits repayments to amounts borrowed from, or payments owing to, the LMIHF of a former RDA, which had been deferred. The amount that the Agency contends is owed was not a result of funds being borrowed or amounts

owed as a result of a deferral. As such, this item does not meet the definition of an enforceable obligation pursuant to HSC section 34171 (d) (1) (G). Therefore, this item is not an enforceable obligation and the requested Redevelopment Property Tax Trust Fund (RPTTF) funding in the amount of \$517,500 is denied.

- Item No. 370 – Low and Moderate Income Housing Project management cost in amount of \$1,620,828. Finance continues to partially approve this item. The Agency provided a breakdown of how the total requested amount was allocated to housing projects listed on ROPS 16-17. Of the requested amount, a total of \$734,850 was related to the Oak to 9th Project (Brooklyn Basin) under Item No. 423, which was initially denied. During the Meet and Confer process, the Agency requested that the project management costs for Item No. 423 be reconsidered if that item is approved for funding.

As noted in the bullet below, Item No. 423 is not an enforceable obligation, but rather it is an excess bond proceeds obligation pursuant to HSC section 34191.4 (c) (1). The use of excess bond proceeds does not constitute an enforceable obligation pursuant to HSC section 34171 and therefore, do not create further enforceable obligations. As such, the Agency's request to fund project management costs incidental to the use of excess bond proceeds is not eligible for funding out of RPTTF. Finance notes that to the extent allowable, the Agency should use available bond proceeds to fund project management costs and should request such funding on a ROPS. Therefore, the related project development costs are also not an enforceable obligation of the Agency. As a result, of the requested \$1,620,828, the amount of \$734,850 is not eligible for RPTTF funding.

- Item No. 421 – MacArthur BART affordable housing in the amount of \$5,200,000 from excess bond proceeds. This item was not reviewed during the initial review. Subsequent to the Meet and Confer process, the Agency requested that this item be decreased by \$2,200,000 to \$3,000,000 for ROPS 16-17 and the funding source be changed to RPTTF. Finance decreases the amount requested to a total of \$3,000,000 and changes the funding source to RPTTF. Additionally, the outstanding balance has been updated to \$16,005,000 for ROPS 16-17.
- Item No. 422 – Oak to 9th Project – Land Acquisition in the amount of \$0. This item was not reviewed during the initial review. Subsequent to the Meet and Confer process, the Agency requested that this item be funded at \$1,000,000 from RPTTF for ROPS 16-17. Finance approves the amount requested of \$1,000,000 from RPTTF. Additionally, the outstanding balance has been updated to \$21,545,373 for ROPS 16-17.
- Item No. 423 – Oak to 9th Project (Brooklyn Basin) is not an enforceable obligation of the Agency. Finance continues to deny the request for RPTTF funding, but increases the excess bond proceeds requested as this item is an excess bond proceeds obligation pursuant to HSC section 34191.4 (c) (1).

We note that the Agency initially requested re-authorization to use \$2,545,000 in excess bond proceeds, which were approved on a previous ROPS. The Agency received a Finding of Completion on May 29, 2013, and is allowed to expend bond proceeds derived from bonds issued prior to January 1, 2011 (pre-2011 bond proceeds) and housing bonds issued prior to June 28, 2011, in a manner consistent with the bond covenants. Such expenditures constitute the creation of an "excess bond proceeds obligation" payable from available excess bond proceeds. Additionally, during ROPS 15-16B, Agency staff

acknowledged the Agency's use of bond proceeds was pursuant to recent Senate Bill 107 changes. As such, Finance approved bond funding for pre-development costs of the affordable housing units in accordance with HSC section 34176 (g). Finance is re-authorizing the Agency's request to use \$2,545,000 in excess housing bond proceeds in accordance with HSC section 34176 (g), as the funds may not have been expended.

During the Meet and Confer process, the Agency requested that excess bond proceeds be increased by \$2,000,000 for a total of \$4,545,000 for ROPS 16-17. As such, Finance approves a total of \$4,545,000 in excess bond proceeds and continues to deny the requested amount of \$4,000,000 in RPTTF.

Our approval is specifically limited to the use of excess pre-2011 bond proceeds pursuant to HSC section 34191.4 (c) (1) and excess housing bond proceeds pursuant to HSC section 34176 (g). Such approval should not be construed as approval of the project itself as an enforceable obligation. Therefore, we continue to change the Obligation Type from "OPA/DDA/Construction" to "Bond Funded Project – Housing."

- Item No. 426 – West Oakland Loan Indebtedness in the total outstanding amount of \$2,717,524. Finance continues to deny this item. Finance initially denied this item because the Agency was unable to provide sufficient financial documentation to support the current outstanding principal amount owed. During the Meet and Confer process, the Agency provided a summary of actual expenditures. The summary shows that expenditures incurred by the City started in fiscal year 2011-12, which were in accordance with the list of projects in the First Amendment to Funding Agreement dated March 25, 2011, between the City and the former RDA. Additionally, documents provided by the Agency indicated that contracts entered into by the City were after June 27, 2011. As such, the outstanding balance as of June 27, 2011, was \$0 for the loan agreement approved by the Oversight Board (OB) in OB Resolution 2013-16.

ABx1 26 requires agencies to expeditiously wind down the affairs of the dissolved RDAs and provides successor agencies with limited authority only to the extent needed to implement the wind down of RDA affairs and perform under enforceable obligations. As of June 27, 2011, RDAs were prohibited from creating any new obligations and engaging in any new redevelopment. As of February 1, 2012, the RDA's authority was suspended and the RDA ceased to exist. Any transfers of the RDA's powers to a third party were also impacted by the prohibitions and the dissolution. Since the RDA no longer had the power to take out or make new loans or engage in any other activity to create obligations as of June 27, 2011, these powers could no longer be transferred to a third party. Thus, any specific obligations, whether by the RDA or a third party acting on behalf of the RDA, that did not exist as of June 27, 2011, are not enforceable obligations on the successor agency within the meaning of HSC section 34171 (d) (1). As such, the various contracts entered into by the City with third parties after June 27, 2011, are not obligations of the Agency.

Therefore, for the above reasons, this item is not an enforceable obligation and the \$1,813,238 requested for ROPS 16-17 is denied.

In addition, per Finance's letter dated April 4, 2016, we continue to make the following determinations not contested by the Agency during the Meet and Confer:

- Item No. 6 – Claimed administrative costs exceed the allowance by \$226,930. HSC section 34171 (b) (3) limits the fiscal year 2016-17 Administrative Cost Allowance (ACA) to three percent of actual distributed RPTTF funding in the preceding fiscal year or \$250,000, whichever is greater; not to exceed 50 percent of the distributed RPTTF in the preceding fiscal year. As a result, the Agency's maximum ACA is \$1,794,454 for the fiscal year 2016-17. Although \$2,021,384 is claimed for administrative cost, only \$1,794,454 is available pursuant to the cap. Therefore, \$226,930 of excess administrative cost is not allowed.

Except for the items denied in whole or in part or reclassified, Finance is not objecting to the remaining items listed on your ROPS 16-17.

On the ROPS 16-17 form, the Agency reported cash balances and activity for the period of July 1, 2015 through June 30, 2016. Finance performs a review of the Agency's self-reported cash balances on an ongoing basis. Be prepared to submit financial records and bridging documents to support the cash balances reported upon request. If it is determined the Agency possesses cash balances that are available to pay approved enforceable obligations, HSC section 34177 (l) (1) (E) requires these balances to be used prior to requesting RPTTF.

The Agency's maximum approved RPTTF distribution for the reporting period is \$66,108,332 as summarized in the Approved RPTTF Distribution table on page 6 (See Attachment).

ROPS distributions will occur twice annually, one distribution for the July 1, 2016 through December 31, 2016 (ROPS A period), and one distribution for the January 1, 2017 through June 30, 2017 (ROPS B period) based on Finance's approved amounts. Since Finance's determination is for the entire ROPS 16-17 period, the Agency is authorized to receive up to the maximum approved RPTTF through the combined ROPS A and B period distributions.

On the ROPS 16-17 form, the Agency was not required to report the estimated obligations versus actual payments (prior period adjustment) associated with the July 1, 2015 through December 31, 2015 period (ROPS 15-16A). The Agency will report actual payments for ROPS 15-16A and ROPS 15-16B on the ROPS 18-19 form pursuant to HSC section 34186 (a) (1). A prior period adjustment will be applied to the Agency's future RPTTF distribution. Therefore, the Agency should retain any difference in unexpended RPTTF.

Please refer to the ROPS 16-17 schedule used to calculate the total RPTTF approved for distribution:

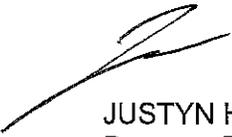
<http://www.dof.ca.gov/redevelopment/ROPS>

This is Finance's determination related to the enforceable obligations reported on your ROPS for the period July 1, 2016 through June 30, 2017. This determination only applies to items when funding was requested for the 12-month period. Finance's determination is effective for this time period only and should not be conclusively relied upon for future ROPS periods. All items listed on a future ROPS are subject to review and may be denied even if it was not denied on this ROPS or a preceding ROPS. The only exception is for items that have received a Final and Conclusive determination from Finance pursuant to HSC section 34177.5 (i). Finance's review of Final and Conclusive items is limited to confirming the scheduled payments as required by the obligation.

The amount available from the RPTTF is the same as the amount of property tax increment available prior to the enactment of the redevelopment dissolution statutes. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the Agency in the RPTTF.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst, at (916) 445-3274.

Sincerely,



JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County

Attachment

Approved RPTTF Distribution			
For the period of July 2016 through June 2017			
	<u>ROPS A Period</u>	<u>ROPS B Period</u>	<u>Total</u>
Requested RPTTF (excluding administrative obligations)	\$ 19,342,195	\$ 48,037,270	\$ 67,379,465
Requested Administrative RPTTF	580,266	1,441,118	2,021,384
Total RPTTF requested for obligations on ROPS 16-17	19,922,461	49,478,388	\$ 69,400,849
Adjustment to Agency Requested RPTTF	2,000,000	2,000,000	4,000,000
Total RPTTF adjustments	2,000,000	2,000,000	\$ 4,000,000
Total RPTTF requested	21,342,195	50,037,270	71,379,465
<u>Denied Items</u>			
Item No. 207	(517,500)	0	(517,500)
Item No. 370	(367,425)	(367,425)	(734,850)
Item No. 423	(2,000,000)	(2,000,000)	(4,000,000)
Item No. 426	(906,619)	(906,618)	(1,813,237)
	(3,791,544)	(3,274,043)	(7,065,587)
Total RPTTF authorized	17,550,651	46,763,227	\$ 64,313,878
Total Administrative RPTTF requested	580,266	1,441,118	2,021,384
Administrative costs in excess of the cap (see Administrative Cost Allowance Cap table below)	0	(226,930)	(226,930)
Total Administrative RPTTF authorized	580,266	1,214,188	\$ 1,794,454
Total RPTTF approved for distribution	18,130,917	47,977,415	\$ 66,108,332

Administrative Cost Allowance Cap Calculation	
Actual RPTTF distributed for fiscal year 2015-16	\$ 61,084,234
Less sponsoring entity loan and Administrative RPTTF	1,269,106
Actual RPTTF distributed for 2015-16 after adjustment	59,815,128
Administrative Cap for 2016-17 per HSC section 34171 (b)	1,794,454
ROPS 16-17 Administrative RPTTF after Finance adjustments	2,021,384
Administrative Cost Allowance in excess of the cap	\$ (226,930)

April 29, 2016

Ms. Sarah T. Schlenk, Agency Administrative Manager
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Dear Mr. Schlenk:

Subject: Objection of Oversight Board Action

The City of Oakland Successor Agency (Agency) notified the California Department of Finance (Finance) of its March 14, 2016 Oversight Board (OB) resolution on March 15, 2016. Pursuant to Health and Safety Code (HSC) section 34179 (h), Finance has completed its review of the OB action.

Based on our review and application of the law, the Agency's OB Resolution 2016-02, approving the assignment of the former Redevelopment Agency's (RDA) rights and obligations under the City Center Disposition and Development Agreement (DDA) to the City of Oakland (City), is not approved.

The OB is finding that the proposed assignment of the Agency's rights and obligations under the DDA to the City will benefit the taxing entities. However, the terms of the 13th Amendment to the DDA, dated February 1, 2011, obligated Oakland T12, LLC (Developer) to pay a total of \$1 million in extension fees to the Agency by April 12, 2014 in order to extend the completion deadline to April 12, 2017. According to the Agency, the Developer paid the first extension fee of \$300,000 pursuant to the 13th Amendment, but did not pay the remaining \$700,000. Instead, if the assignment of the DDA was approved, the Developer and the City would enter into a 14th Amendment, and upon execution, the Developer will pay the City \$500,000 in extension fees and an unknown amount yet to be negotiated for the contemplated DDA amendment to extend performance deadlines. Further, the Developer would be allowed two additional extensions, in which a total of \$500,000 would be paid to the City. Although, the assignment of the DDA would reduce project management costs incurred by the Agency and remove the obligation from the Agency's Recognized Obligation Payment Schedule, it would transfer the Agency's right to collect the remaining \$700,000 in extension fees due from the Developer to the City.

Pursuant to HSC Section 34177.3 (c), the Agency is not authorized to transfer any powers or revenues to another party, private or public, except pursuant to an enforceable obligation. Additionally, HSC section 34177 (f) requires the Agency to enforce all former RDA rights for the benefit of the taxing entities, including continuing to collect revenues due to the RDA. Therefore, without collection of the remaining \$700,000 extension fees by the Agency, the assignment of the DDA to the City would not be approved.

Ms. Sarah Schlenk
April 29, 2016
Page 2

As authorized by HSC section 34179 (h), Finance is returning your OB action to the board for reconsideration.

Please direct inquiries to Cindie Lor, Supervisor, or Todd Vermillion, Lead Analyst, at (916) 445-1546.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Justyn Howard', with a large circular flourish on the left side.

JUSTYN HOWARD
Program Budget Manager

cc: Mr. Patrick Lane, Development Manager, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, Alameda County