DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

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December 18, 2012

Ms. Sarah T. Schlenk, Agency Administrative Manager
Oakland Redevelopment Successor Agency
250 Frank Ogawa Plaza, #3315
Oakland, CA 94619

Dear Ms. Schlenk:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 5, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Oakland Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 22, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 5, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 5, 2012.

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 item being disputed.

- Item No. 76 – Scotlan Convention Center for $3.75 million. Finance continues to deny this item at this time. Finance denied this item as HSC section 34163 (c) prohibits an agency from amending or modifying agreements, obligations, or contracts with any entity or any purpose after June 27, 2011. The construction contract was amended on June 28, 2011, increasing the original amount of $4 million to $7.75 million. Therefore, the amendment amount of $3.75 million is not an enforceable obligation. The Agency contends the item is an enforceable obligation because the source of funding is Redevelopment Agency (RDA) Central District Bond Proceeds and the agreement is necessary to continue operating Scotlan as a viable convention facility prior to final disposition of the facility. However, HSC section 34163 (c) prohibits an agency from amending or modifying agreements, obligations, or contracts with any entity, for any purpose after June 27, 2011; therefore, the item is not eligible for bond funding at this time. Although, successor agencies may be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per HSC section 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- Item No. 252 – Coliseum Transit Village Infrastructure for $8.4 million from Prop 1C Grant. Finance no longer objects to the item. Finance denied the item as HSC section 34163 (b) prohibits an agency form entering into contracts with any entity for any purpose after June 27, 2011. Although no funding was requested for the reporting period, the item did not have

contracts executed prior to June 28, 2011. The Agency contends the item is an enforceable obligation because the grant was executed on March 3, 2011, and the Department of Housing and Community Development requested the agreement be re-signed when a new RDA administrator was appointed. The original agreement was signed by the Agency on March 3, 2011; the only changes made to the subsequent agreement were to reflect the signors representing the Agency. Therefore, this is an enforceable obligation.

- Item No. 301 – Economic Development Conveyance (EDC) Master Developer (MD) ENA/PSA for $13.3 million. Finance continues to deny the item. Finance denied the item as HSC section 34163 (b) prohibits an agency from entering into contracts with any entity for any purpose prior to after June 27, 2011. Although no funding was requested for the reporting period, the item did not have contracts executed prior to June 28, 2011. The Exclusive Negotiating Agreement shows intent to develop infrastructure master planning and design; however, no development agreement has been executed prior to June 28, 2011 to establish the item as an enforceable obligation.

  The Agency contends the item is an enforceable obligation because the Exclusive Negotiating Agreement (ENA) as amended created a separate and legally enforceable contractual commitment between the former RDA and California Capital Group, whereby the former RDA agreed to pay up to approximately $13 million for the completion of the Master Infrastructure Planning. However, Section 5.1 of the ENA indicates that once negotiated, the form of the Lease Development and Disposition Agreement (LDDA) is to be recommended to the former RDA Board. The former RDA Board no longer exists; therefore, even if the negotiations were concluded, the LDDA could not be presented for recommendation and approval. Additionally, Section 1 of the ENA states that "either party shall have the right to terminate this Agreement without liability to the other party upon sixty (60) days' prior written notice to the other party." Furthermore, Section 2 of the ENA states that "In the event...if either party terminates the Agreement early, the Agency and the Developer shall have no further obligation to negotiate exclusively with each other for the future development of the Property." Therefore, this item is not an enforceable obligation and the ENA should be terminated.

- Item Nos. 206 and 207 – Palm Villas Housing Project (Palm Villas) for $921,766 and 9451 MacArthur Blvd/Evelyn Rose Project (Evelyn Rose) for $517,500 funded by Reserve Balance. Finance continues to deny the items at this time. Finance denied the items as HSC section 34177 (d) requires the Agency to remit unencumbered balances of the former RDA funds to the county auditor-controller for distribution to the taxing entities. Agreements or repayment schedules were not provided and the requirement to set aside funds into the Low and Moderate Income Housing Fund (LMIHF) is no longer required. The Agency contends the items are enforceable obligations because approval of transfer for Item 206 was conditioned on the understanding that the transferred funds would be reimbursed to be used for their original affordable housing use and the funds for Item 207 are due and owing to the LMIHF due to the fact that affordability restrictions on the property were removed. For Item 206, the repayment was to be made from future Oak Knoll land sales proceeds to the extent sufficient funds are available. Although this item may be an enforceable obligation in fiscal year 2013-14, the land sale has not occurred; therefore, the item should be reported for $0. For Item 207, HSC section 34176 (e) (6) (B) states that loan or deferral repayments shall not be made prior to the 2013-14 fiscal year. Therefore, the items are currently not enforceable obligations.

- Item No. 339 – East Oakland Community Project (EOCP) for $3.7 million funded by LMIHF. Finance no longer objects to this item. Finance denied this item as this is a payment guaranty between the RDA and Washington Mutual Bank for the EOCP and the payment guaranty amount listed on the ROPS for the project is not supported with documents provided. The Agency contends this item is an enforceable obligation because the former RDA executed the agreement in 2006; however, the funding source and total guaranty were incorrectly stated. The funding source should be Redevelopment Property Tax Trust Fund (RPTTF) and the total guaranty should be $1,296,880. The Loan Guaranty states the "upon any default of Obligor...Bank may, at its option, proceed directly and at once, without notice, against Guarantor to collect and recover the full amount of the liability hereunder or any portion thereof, without proceeding against Obligor." The EOCP has informed the Agency that they will not be able to continue making payments. When the EOCP stops making payments the Bank may proceed to collect the full amount from the Agency as Guarantor. Therefore, the item is an enforceable obligation and Finance approves $1,296,880 out of RPTTF in ROPS III instead of LMIHF.

- Item No. 370 – Low and Moderate Income Housing Project and Other Staff/Operations, successor agency in the amount of $9,558,079. Finance continues to deny this item. Finance denied this item as HSC section 34176 (a) (1) requires the housing entity to be responsible for the housing operations and administrative costs. The Agency contends this item is an enforceable obligation because it is payment for city staff directly managing dozens of current housing projects now underway and listed on the ROPS. However, per HSC section 34176 (a) (1), if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets, excluding any amounts on deposit in the LMIHF and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county. So, any costs associated with the assets (loan receivables) that were transferred to the housing successor agency are now the obligation of the housing successor agency, not the successor agency. Therefore, this item is not an enforceable obligation and not eligible for RPTTF funding.

- Item Nos. 38 through 53, 121 through 164, 168 through188, 190 through195, 214 through 240, 261 through 297, and 324 through 334 – Façade and Tenant Improvement Program (Program) totaling $5.2 million. Finance denied the items as HSC section 34177 (h) states the successor agencies are required to expeditiously wind down the affairs of the RDA. The former RDA is a sponsor of the Program that provides matching grants to grant recipients. The grant agreements require the grantees to submit information, such as scope of work and budgets by specified deadlines in order to receive grant funding. However, these deadlines have not been met, and grant funds have not been awarded.

  The Agency agrees that the following items are not enforceable obligations and will be removed from the ROPS – Items 41, 42, 47, 48, 49, 124, 130, 139, 168, 169, 170, 186, 187, 188, 191, 195, 219, 226, 229, 230, 235, 236, 238, 261, 262, 263, 272 through 278, 282, 285 through 288, 291, 294, 325, 326, 331, 332, and 333. Additionally, based on the projected status of the projects for December 31, 2012, the following items are not enforceable obligations and should also be removed from the ROPS – Items 214, 216, 217, 220, 227, 231, 233, 234, 240, and 292. Finance continues to deny these preceding items.

However, the Agency contends the remaining items are enforceable obligations because the grants can be extended if projects continue moving forward in a timely manner. The Agency provided the projected status for the items and documents for a sample of the items showing they have been moving forward in the planning/design and construction phases. The remaining items are enforceable obligations and Finance no longer objects to those items.

- Administrative cost – Finance previously denied $25, 478 as it exceeded the administrative cost allowance for fiscal year 2013-14. Based on approval of Item 339 above, the administrative allowance is adjusted to $771,503 from $758,075. However, based on further review of ROPS III, Finance denies the additional $2,110,403 in administrative costs requested for payment out of reserve balances. HSC section 34171 (b) limits administrative expenses to three percent of property tax allocated to the successor agency or $250,000, whichever is greater. Therefore, $2,110,403 in administrative costs is not an enforceable obligation. In addition, per HSC 34177 (d), successor agencies are required to remit unencumbered balances of redevelopment agency funds to the auditor controller for distribution to the taxing entities.

In addition, per Finance's ROPS letter dated October 5, 2012, the following items not disputed by the Agency continue to be denied:

- HSC section 34163 (b) prohibits an agency form entering into contracts with any entity for any purpose prior to after June 27, 2011. Although no funding was requested for the reporting period, Item No. 208 – Graffiti Abatement/Job Training for $58,756 did not have contracts executed prior to June 28, 2011 and is therefore not an enforceable obligation.

The Agency's maximum approved RPTTF distribution for the reporting period is: $26,488,233 as summarized in the following table:

Approved RPTTF Distribution Amount For the period of January through June 2013		
Total RPTTF funding requested for obligations	$	26,566,044
Less: Six-month total for item(s) denied or reclassified as administrative cost Item 370		$849,314
Total approved RPTTF for enforceable obligations	$	25,716,730
Plus: Allowable RPTTF distribution for administrative cost for ROPS III		771,503
Total RPTTF approved:	**$**	**26,488,233**
Administrative Cost Calculation		
Total RPTTF for the period July through December 2012	$	35,530,735
Total RPTTF for the period January through June 2013		25,716,730
Total RPTTF for fiscal year 2012-13:	**$**	**61,247,465**
Allowable administrative cost for fiscal year 2012-13 (Greater of 3% or $250,000)		1,837,424
Administrative allowance for the period of July through December 2012		1,065,921
Allowable RPTTF distribution for administrative cost for ROPS III:	**$**	**771,503**

Pursuant to HSC section 34186 (a), successor agencies were required to report on the ROPS III form the estimated obligations and actual payments associated with the January through June 2012 period. The amount of RPTTF approved in the above table will be adjusted by the county auditor-controller to account for differences between actual payments and past

estimated obligations. Additionally, these estimates and accounts are subject to audit by the county auditor-controller and the State Controller.

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. 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 successor agency in the RPTTF.

Except for items disallowed as noted above, Finance is not objecting to the remaining items listed in your ROPS III. Obligations deemed not to be enforceable shall be removed from your ROPS. This is Finance's final determination related to the enforceable obligations reported on your ROPS for January 1 through June 30, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not questioned on this ROPS or a preceding ROPS.

Please direct inquiries to Evelyn Suess, Dispute Resolution Supervisor, or Mary Halterman, Analyst at (916) 445-1546.

Sincerely,

Steve Szalay
Local Government Consultant

cc: Mr. Fred Blackwell, Assistant City Administrator, City of Oakland
Ms. Michele Byrd, Director of Housing and Community Development, City of Oakland
Mr. Gregory Hunter, Neighborhood Investment Manager, City of Oakland
Mr. Patrick Lane, Redevelopment Program Manager, City of Oakland
Mr. Jeffrey Levin, Redevelopment Program Manager, City of Oakland
Mr. Daniel Rossi, Deputy City Attorney, City of Oakland
Ms. Carol S. Orth, Tax Analysis, Division Chief, County of Alameda
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