INFORMATIONAL MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee, Executive Director

SUBJECT: Status of Department of Finance Determinations for ROPS III Meet & Confer, the Low and Moderate Income Housing Fund Due Diligence Review Meet & Confer, and the Hunters Point Shipyard/Candlestick Point Final & Conclusive Determination

EXECUTIVE SUMMARY

Under the Redevelopment Dissolution Law, the Successor Agency ("Agency") has submitted requests to the Department of Finance (DOF) for their review and approval: (1) the Meet & Confer Request for the Recognized Obligation Payment Schedule for January to June 2013 (ROPS III); (2) the Meet & Confer Request for the Low and Moderate Income Housing Fund Due Diligence Review (Housing DDR); and (3) the Final & Conclusive Determination Request for the Hunters Point Shipyard/Candlestick Point Project. This memorandum outlines DOF’s response as well as the proposed next steps to resolve any outstanding issues.

DISCUSSION

ROPS III MEET & CONFER

The Agency submitted an Oversight Board approved ROPS III on August 28, 2012. As you know, the ROPS provides authorization to the Successor Agency to expend certain amounts over a six month period for enforceable obligations. On September 14, 2012, DOF staff initiated a review of some of the proposed expenditures and asked for supporting documentation of particular enforceable obligations. Agency staff provided the requested information over the subsequent two weeks. On October 12, 2012, DOF issued its determination letter which made five findings. The Agency disputed four of those five findings and submitted a request to Meet & Confer with DOF on October 19, 2012. The Meet & Confer took place at DOF’s offices in Sacramento on November 16, 2012 and DOF issued their final determination on ROPS III in its letter dated December 14, 2012 (Attachment 1). Of the four disputed items, DOF removed its objections to three of the expenditures and reduced the proposed expenditure for the remaining disputed item. A summary of all the findings and the outcome is below:
<table>
<thead>
<tr>
<th>Finding</th>
<th>ROPS III Proposed Expenditure</th>
<th>DOF Determination</th>
<th>DOF-approved Expenditure</th>
<th>Impact</th>
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<tbody>
<tr>
<td><strong>Item 59:</strong> Bayview Opera House Grant Agreement between Agency and City</td>
<td>$200,000</td>
<td>Contract is invalid per Sec 414171 (d) (2) of the Dissolution Law, stating that contracts between sponsoring city and Agency are not valid. Not disputed by Agency.</td>
<td>$0</td>
<td>City is working to address shortfall of funds (total contract value of $400,000)</td>
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<tr>
<td><strong>Items 68.01-68.21:</strong> Contracts implementing scope of work pursuant to Federal Economic Development Administration Grant Agreements (Hunters Point Shipyard/Candlestick Point Project)</td>
<td>$226,895</td>
<td>DOF removed its objections</td>
<td>$226,895</td>
<td>Contracts may proceed as planned</td>
</tr>
<tr>
<td><strong>Items 84 &amp; 86.01:</strong> Folsom Street Off Ramp Project (Transbay)</td>
<td>$3,900,000</td>
<td>DOF removed its objections</td>
<td>$3,900,000</td>
<td>Contracts may proceed as planned</td>
</tr>
<tr>
<td><strong>Item 123.04:</strong> Amendment to the 5800 3rd Street Senior Housing Loan Agreement (Bayview Hunters Point)</td>
<td>$2,000,000</td>
<td>DOF removed its objections</td>
<td>$2,000,000</td>
<td>Contract amendment may proceed as planned</td>
</tr>
<tr>
<td><strong>Items 1-41 &amp; 45-51:</strong> Administrative Items using RPTTF funding in addition to Administrative Cost Allowance and Other funds</td>
<td>$857,652</td>
<td>DOF reclassified Item 36 (Employee Salary Costs) as non-administrative and removed its objection to using RPTTF; however the RPTTF funds for</td>
<td>$619,391</td>
<td>Agency staff is working to review the administrative budget to identify savings in order to minimize or eliminate the impact of this reduction on services.</td>
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Items 85, 85.01, 85.02, 86: Transbay Pledge Agreement, Developer Selection Process Costs, City Attorney Legal Review for State-Owned Parcel Sales, & Transbay Implementation Agreement (Transbay)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
<th>Details</th>
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<tr>
<td>For items 85.01 &amp; 85.02, DOF states there are no contracts in place to support these expenditures of $210,000, however these items may become enforceable obligations once the Agency receives a Finding of Completion. DOF did not comment on the Pledge Agreement or the Implementation Agreement.</td>
<td>$0</td>
<td>The Agency has separately submitted a Transbay Final &amp; Conclusive Determination Request that addresses these items. For the $210,000 in expenditures on 85.01 and 86.01, the impact would be minimized once a Finding of Completion is issued (anticipated in Summer 2013).</td>
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<tr>
<td>$210,000</td>
<td></td>
<td>For items 85.01 &amp; 85.02, DOF states there are no contracts in place to support these expenditures of $210,000, however these items may become enforceable obligations once the Agency receives a Finding of Completion. DOF did not comment on the Pledge Agreement or the Implementation Agreement.</td>
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<tr>
<td><strong>LOW &amp; MODERATE INCOME HOUSING FUND DUE DILIGENCE REVIEW</strong></td>
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<td>The Agency submitted an Oversight Board approved Housing DDR on October 12, 2012 and DOF issued a determination letter on November 9, 2012. The Agency submitted a request to Meet &amp; Confer on November 16, 2012 (Attachment 2), which took place on November 28, 2012. In early December, Agency staff provided additional supporting documentation and had several meetings with DOF staff, a meeting with Senator Mark Leno, and a meeting with Nancy McFadden, the Governor’s Executive Secretary for Legislation, Appointments, and Policy. DOF issued two letters on December 14, 2012.</td>
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<td>In the first letter (Attachment 3), DOF found that the transfer of the $195 million in Low and Moderate Income Housing Funds (LMIHF) to the City’s Mayor’s Office of Housing on February 1, 2012 was invalid. DOF stated that out of that initial $195 million, $5.9 million is restricted as Federal and State Grants Funds, and $82 million is approved to be reserved for ROPS II and III payments. Using these figures, DOF calculated that $107 million is available for distribution to</td>
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the affected taxing entities. In the second DOF letter issued on December 14, 2012 (Attachment 4), DOF advised that it will not pursue any penalties for not distributing the $107 million in question, pending an additional review to determine what funds, if any, are available to be distributed to taxing entities. The Agency is currently working closely with the City Controller to identify a certified public accounting firm to act as a third party reviewer and to develop the review’s proposed procedures, which will be approved by the Department of Finance in advance of the work. The City Controller, as the county auditor-controller under Redevelopment Dissolution Law, has sent DOF a letter to confirm its understanding that, pending another review, DOF has not finally determined the amount of housing funds, if any, that must be distributed to the taxing entities (Attachment 5). Staff anticipates that this additional review will be completed in the next two months and will continue to update the Oversight Board through the process.

**FINAL & CONCLUSIVE DETERMINATION - HUNTERS POINT SHIPYARD/CANDLESTICK POINT**

On November 7, 2012 the Agency submitted a Request for a Final & Conclusive Determination for the Hunters Point Shipyard/Candlestick Point Project. In addition, the Agency has submitted similar requests for the Transbay Project and the Mission Bay Project. The Redevelopment Dissolution Law, as amended by AB 1484, provides:

> If an enforceable obligation provides for an irrevocable commitment of property tax revenues and where allocation of such revenues is expected to occur over time, the successor agency may petition the Department of Finance to provide written confirmation that its determination of such enforceable obligation as approved in a Recognized Obligation Payment Schedule is final and conclusive, and reflects the department's approval of subsequent payments made pursuant to the enforceable obligation. If the confirmation is granted, then the department's review of such payments in future Recognized Obligation Payment Schedules shall be limited to confirming that they are required by the prior enforceable obligation.

Cal. Health and Safety Code § 34177.5 (i). In addition, the DOF Guidance for a Final and Conclusive Determination states that it will issue a formal letter confirming the final and conclusive determination of an enforceable obligation if three conditions are met: an irrevocable commitment of property tax revenue; an allocation of this revenue over time; and the previous listing of the enforceable obligation on an approved ROPS.

The petition for the Hunters Point Shipyard/Candlestick Point Project requested that DOF provide written confirmation that its determination of three enforceable obligations are final and conclusive. The three obligations are:

- The Phase 1 Development & Disposition Agreement obligation, which primarily relates to the allocation of tax increment for the affordable housing obligation (Phase 1 DDA);
- The Phase 2 Development & Disposition Agreement (Phase 2 DDA);
• The Phase 2 Tax Increment Pledge Agreement, which commits all of the net available tax increment from the Project Site, after pass-throughs, to funding public infrastructure and affordable housing.

The petition explained that these enforceable obligations met the DOF requirements. First, Phase 1 DDA requires the Agency to construct and irrevocably fund with property tax revenues an affordable housing program of 218 units in Phase 1; the Phase 2 DDA requires the Agency to construct and irrevocably fund with property tax revenue a program of infrastructure and open space improvements and approximately 1,644 units of affordable housing and Alice Griffith public housing replacement units; and the Pledge Agreement irrevocably commits tax increment from Phase 2 area for the program of infrastructure, open space and affordable housing. Second, the allocation of property tax revenues occurs over time as the revenues are generated during the terms of DDA1, DDA2, and the Pledge Agreement. Third, DOF has approved ROPS I, II and III, each of which listed these Enforceable Obligations.

In a letter dated December 14, 2012, DOF determined that these enforceable obligations, as listed in ROPS III as items 67, 123, 173 and 174, are final and conclusive and stated that DOF’s review of these obligations on future ROPS shall be limited to confirming that the requested payments are required by the prior enforceable obligation. (Attachment 6).

NEXT STEPS

Agency staff will continue to work with the City Controller and DOF to resolve the remaining issues regarding the Housing DDR. The Agency has submitted two other requests for Final & Conclusive Determinations (for Mission Bay and Transbay), and will continue to provide DOF with any additional information they might need in order for them to make determinations on those requests.

(Originated by Sally Oerth, Deputy Director)

Tiffany Bohee
Executive Director

Attachments:
Attachment 1: DOF ROPS III Determination Letter (December 14, 2012)
Attachment 2: Agency LMIHF DDR Meet & Confer Request (November 16, 2012)
Attachment 3: DOF LMIHF DDR Meet & Confer Determination Letter #1 (December 14, 2012)
Attachment 4: DOF LMIHF DDR Meet & Confer Determination Letter #2 (December 14, 2012)
Attachment 5: CCSF Controller’s Office LMIHF DDR Letter to DOF (December 20, 2012)
Attachment 6: DOF Final & Conclusive Determination –HPSY/CP (December 14, 2012)
December 14, 2012

Ms. Tiffany Bohee, Executive Director  
City and County of San Francisco Successor Agency  
One South Van Ness Avenue, Fifth Floor  
San Francisco, CA  94103

Dear Ms. Bohee:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 12, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City and County of San Francisco Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 28, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 12, 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 15, 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 items being disputed and no longer objects to the following items at this time:

- Item Nos. 68.01 through 68.21 - EDA Grant Agreements in the amount of $9.3 million.
- Items Nos. 84 and 86.01 - The Folsom Street Off-Ramp Project in the amount of $3.9 million.
- Item No. 123.04 - 5800 3rd Street, Carroll Avenue Senior Tax Increment Loan Agreement in the amount of $3.3 million.
- Finance no longer reclassifies Item 36 as an administrative cost. However, although enforceable, Items 1 through 35, 37 through 41, and 45 through 51 totaling $857,852 are reclassified as administrative costs. Although the Agency contends those items are enforceable obligations per HSC section 34171 (b), the remaining items do not fall into any of the following categories that are specifically excluded from the administrative cap as defined by HSC section 34171 (b):
  - Any litigation expenses related to assets or obligations.
  - Settlements and judgments.
  - The costs of maintaining assets prior to disposition.
Employee costs associated with work on specific project implementation activities, including, but not limited to, construction inspection, project management, or actual construction, shall be considered project-specific costs.

Therefore, item 36 is an enforceable obligation and Items 1 through 35, 37 through 41, and 45 through 51 totaling $857,652 are reclassified as administrative costs.

In addition, per Finance’s ROPS III letter dated October 12, 2012, the following items which were not disputed by the Agency continue to be denied:

• Item No. 59 – The Grant Agreement for Bayview Opera House in the amount of $200,000. This is an agreement between the City and County of San Francisco and the Agency. HSC section 34171 (d) (2) states agreements, contracts, or arrangements between the city that created the Agency are not enforceable obligation. Therefore, this item is not eligible for RPTTF funding.

• Items Nos. 85, 85.01, 86.02, and 86 – The Folsom Street Off-Ramp Project in the amount of $210,000. There are no contracts in place to support these expenditures. The Agency requested bond proceeds for these items. Upon receiving a Finding of Completion from Finance, these items may become enforceable pursuant to HSC section 34191.4 (c). Until then, they are not enforceable obligations and not authorized for payment.

The Agency’s maximum approved RPTTF distribution for the reporting period is: $104,094,958 as summarized in the following table:

<table>
<thead>
<tr>
<th>Approved RPTTF Distribution Amount</th>
<th>For the period of January through June 2013</th>
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<tbody>
<tr>
<td>Total RPTTF funding requested for obligations</td>
<td>$101,256,193</td>
</tr>
<tr>
<td>Less: Six-month total for item(s) denied or reclassified as administrative cost</td>
<td></td>
</tr>
<tr>
<td>Items 1 through 35, 37 through 41, and 45 through 51*</td>
<td></td>
</tr>
<tr>
<td>Total approved RPTTF for enforceable obligations</td>
<td>$101,017,932</td>
</tr>
<tr>
<td>Plus: Allowable RPTTF distribution for administrative cost for ROPS III</td>
<td>$3,077,026</td>
</tr>
<tr>
<td>Total RPTTF approved:</td>
<td>$104,094,958</td>
</tr>
</tbody>
</table>

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 Justyn Howard, Assistant Program Budget Manager at (916) 445-1546.

Sincerely,

[Signature]
Steve Szajny
Local Government Consultant

cc: Ms. Sally Oerth, Deputy Director, City and County of San Francisco
    Mr. James Whitaker, Property Manager, San Francisco County
    California State Controller's Office
November 16, 2012

SAN FRANCISCO MEET AND CONFER REQUEST FORM:
LMIHF DUE DILIGENCE REVIEW

Summary of Disputed Issue:

The Department of Finance ("DOF") determined, in a letter dated November 9, 2012, that $110 million from the former Low and Moderate Income Housing Fund ("LMIHF") of the Redevelopment Agency of the City and County of San Francisco ("Redevelopment Agency") must be remitted to the county auditor controller for disbursement to the taxing entities. In addition, DOF determined that the transfer of funds in the LMIHF to the duly designated Housing Successor, under Cal. Health and Safety Code § 34176 (a)(1)¹, was "not a valid transfer." The Successor Agency to the Redevelopment Agency ("Successor Agency") disputes this determination because the $110 million are legally restricted funds for enforceable obligations that have been approved by the Oversight Board of the City and County of San Francisco ("Oversight Board") without DOF objection, and these funds are needed to fulfill payment obligations beyond the six-month fiscal period of the current ROPS.

We believe that the $110 million figure was calculated by deducting federal and state grant funds and the recognized payment amounts on the ROPS II and III (as well as one item in dispute), from the total LMIHF balance on February 1, 2012 (or approximately $195.2 million). This calculation ignores funds properly committed or expended under the initial ROPS, the amounts encumbered by existing, recognized enforceable obligations that will be payable under future ROPS, and the existence of funds in the LMIHF (i.e., bond proceeds) with legal restrictions that cannot be transferred to the taxing entities. Furthermore, the Oversight Board authorized the valid transfer of all of these fully encumbered funds in the LMIHF to the Mayor’s Office of Housing ("MOH"), as the designated Housing Successor, to fulfill identified housing obligations. DOF’s recent approval of the Housing Assets Transfer authorized the Housing Successor to use these funds, including the $110 million at issue, for the recognized enforceable obligations.

Background/History:

Prior to dissolution of the Redevelopment Agency, the City and County of San Francisco ("City and County") elected, under Section 34176, to retain the housing assets and functions previously performed by the Redevelopment Agency. These assets and functions are substantial in light of the City and County’s long-standing commitment to build affordable housing in one of the most expensive housing markets in the country. The Redevelopment Agency had assisted in the development of over 10,000 affordable housing units restricted to low- and moderate- income households and had significant and unfulfilled obligations, as explained below, to assist in the development of affordable housing. Pursuant to Board of Supervisors’ Resolution No. 11-12, available at http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/resolutions12/r0011-12.pdf, and Section

¹All subsequent statutory references are to the California Health and Safety Code unless otherwise noted.
34176, the City and County accepted these housing assets and functions on February 1, 2012, placed them under the administrative jurisdiction of MOH, and vested it with the authority to perform all of the Redevelopment Agency's rights and obligations relating to such assets.

On March 6, 2012, the Oversight Board ratified, by Resolution No. 3-3012, available at http://sfgsa.org/modules/showdocument.aspx?documentid=8780, the transfer of housing assets and functions to the Housing Successor and reported this action to DOF, which did not object. See E-mail from Sally Oerth, Deputy Director, Successor Agency, to redevelopment_administration@dof.ca.gov (Mar 9, 2012, 05:12 PM). The Redevelopment Dissolution Law, as it existed at that time, required the Oversight Board to “[t]ransfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.” [emphasis added] (Statutes 2011, chapter 5, section 7 (former Section 34181(c)). Oversight Board Resolution No. 3-2012 fulfilled this obligation.

Also in March 2012, the Successor Agency informed DOF of the transfer of the LMIHF to the City and County in response to an inquiry from Douglas Evans at DOF, who specifically inquired if the City and County or Successor Agency had adopted a policy “in how the Low/Mod fund will be maintained going forward.” E-mail from Douglas Evans, DOF, to James Morales, Deputy Director (February 2, 2012). In a letter dated March 7, 2012, the Successor Agency explained that the City and County had elected to retain the Redevelopment Agency’s housing assets and quoted the following language from the Board of Supervisors’ Resolution No. 11-12: “That immediately upon the dissolution of the Agency, the City accepts the transfer of all the affordable housing assets of the Agency (including, without limitation, all funds that the CRL has required under Section 33334.3 to be deposited in a separate Low and Moderate Income Housing Fund…” Letter, Tiffany Bohee, Executive Director, Successor Agency, to Douglas Evans, DOF (March 7, 2011). DOF did not object to or otherwise raise any concerns about this City and County’s acceptance of these assets.

On April 10, 2012, the Oversight Board approved the Successor Agency’s first Recognized Obligation Payment Schedule (“ROPS”), which included an extensive description of the factual and legal basis for the long-term affordable housing enforceable obligations that the City and County assumed from the Redevelopment Agency. Exhibit C to Oversight Board Resolution No. 5-2012, available at http://sfgsa.org/index.aspx?page=5254. As described in the resolution, these enforceable obligations include the contractual obligation to build approximately 1358 affordable housing units in the Candlestick Point-Hunters Point Shipyards Phase 1 and 2 Projects and 1,445 affordable housing units in Mission Bay South and Mission Bay North (of which 674 units have been constructed), the statutory and contractual obligation to build 1200 affordable units in the Transbay Project Area, and the statutory obligation under Sections 33333.7 and 33333.8 to replace approximately 5800 affordable units that the Redevelopment Agency had previously destroyed. On April 10, 2012, the Successor Agency transmitted Resolution No. 5-2012, including its Exhibit C, to DOF, which did not object. See E-mail from Sally Oerth, Deputy Director, Successor Agency to
redevelopment_administration@dof.ca.gov (Apr. 10, 2012, 6:37 pm).

Given the substantial enforceable obligations of the Redevelopment Agency to develop affordable housing, the City and County, its Oversight Board, the Successor Agency, and the Housing Successor have properly asserted the need to retain the balance of the LMIHF, which was $195.2 million on February 1, 2012. All three ROPS that the Oversight Board reviewed and approved include the enforceable obligations that encumber the LMIHF balance. Moreover, in reviewing ROPS I, II, and III, DOF has requested supporting documentation for a number of these enforceable obligations. The Successor Agency has provided the requested information and, with one exception noted below\(^2\), DOF has approved all of the items after its additional review. See Attachment 1 (List of DOF Requests for Supporting Documentation of Affordable Housing Enforceable Obligations on ROPS). On May 25, 2012, Mark Hill, Program Budget Manager for DOF, provided a letter to the Agency stating that all items on ROPS I and II were approved at that time. Letter from Mark Hill, DOF, to Jim Morales, Successor Agency (May 25, 2012).

On August 1, 2012, MOH submitted, under Section 34176 (a) (2), a Housing Asset Transfer Form, which included the LMIHF balance as a housing asset. Under Section 34176 (e), housing assets include “any funds that are encumbered by an enforceable obligation to build or acquire low- and moderate-income housing.” On September 7, 2012, DOF informed MOH that it was “not objecting to any of the assets or transfers of assets identified on your [Housing Asset Transfer] Form.” Letter, Steve Szalay, Local Government Consultant, to Olson Lee, MOH Director (Sep. 7, 2012). After approval of the Housing Asset Transfer Form, Redevelopment Dissolution Law authorized MOH, as the Housing Successor, to use the LMIHF balance to fulfill enforceable obligations and to “designate the use of and commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations that have been approved in a Recognized Obligation Payment Schedule.” Section 34176 (g) (1) (A).

On October 12, 2012, the Oversight Board approved, by Resolution No. 12-2012, the Due Diligence Review for Housing (“DDR”). The statutory purpose of the DDR is to “determine the unobligated balances available for transfer to taxing entities.” Section 34179.5(a). Successor agencies are required to “[r]emit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency.” Section 34177(d) [emphasis added]. The Oversight Board found that all of the LMIHF was obligated and that “no funds, including cash and cash equivalents, are available for transfer to the taxing entities.” Resolution No. 12-2012, available at http://www.sfgsa.org/modules/showdocument.aspx?documentid=9264.

On November 9, 2012, DOF issued its letter determining that $110 million of the LMIHF balance should be distributed to taxing entities. The letter, however, does not address the

\(^2\) An amendment of a loan for 5800 3rd Street Senior Housing, which appears on ROPS I, II, and III, is the subject of the upcoming ROPS III Meet & Confer.
validity of the underlying enforceable obligations to which the $110 million is committed. Apparently, DOF calculated the $110 million by deducting the Federal and State Grant Funds, the amounts shown for ROPS II and ROPS III, and the disputed amount for 5800 3rd Street Senior Housing from the total LMIHF amount of $195.2 million. DOF states that the Agency may retain only $79 million in non-Federal/State funds for payments associated with ROPS II and III. This determination not only disregards the enforceable obligations that encumber these funds, but also disregards the payments of approved expenditures that have already occurred and that appeared on ROPS I.

Additionally, while 100 percent of the $195.2 million is encumbered by enforceable obligations, approximately 90% of the LMIHF balance is further restricted and not eligible for distribution to taxing entities because of the source of the funds: 70 percent are bond proceeds; 17 percent are non-tax increment revenues generated by the housing assets approved by DOF on the Housing Asset Transfer List; and 3 percent are federal and state grant proceeds.

Justification:

1. Encumbered funds are not available for distribution to taxing entities.

The $110 million that DOF seeks to distribute to taxing entities are funds legally restricted for enforceable obligations, as defined in Sections 34171 (d) (1) and 34179.5 (b)(2), and thus are not available for distribution to taxing entities absent a decision by an oversight board to terminate or renegotiate particular enforceable obligations under Section 34181. The purpose of the DDR is to identify the “unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency” for distribution to taxing entities. Section 34177 (d) (cross reference in Section 34179.5 (a)). The Successor Agency’s DDR, as approved by the Oversight Board in Resolution No. 12-2012, found that the balance of the LMIHF was encumbered. In its reviews of ROPS I, II and III, DOF has not determined that the enforceable obligations associated with the LMIHF balance are invalid (with one exception that is the subject of Meet and Confer on November 16, 2012). Accordingly, there were no unencumbered funds in the LMIHF, DOF has no statutory basis to require the distribution of the LMIHF balance to the taxing entities, and any such distribution would contradict the requirements of Sections 34171 (d) and 34179.5 (b)(2).

2. Funds to satisfy enforceable obligations may be retained for future expenditures associated with valid enforceable obligations.

The legally restricted balances of the LMIHF (which include a substantial amount of bond proceeds) may be retained for satisfaction of valid enforceable obligations even if the funds exceed the amount necessary to fulfill current expenditure obligations on an

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3 The remaining 10 percent of the funds are tax increment funds that are encumbered by approved obligations for projects and project related costs for current construction or for construction starting in this Fiscal Year or Fiscal Year 2013/14.

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approved ROPS. See Section 34176 (g). Redevelopment Dissolution Law does not authorize DOF to unencumber funds merely because a valid expenditure occurs in a future fiscal period of a ROPS that has yet to be submitted and approved (or in a previous ROPS under which funds have been expended or committed). Indeed, consideration of future payment obligations and reserves required to fulfill those obligations are expressly recognized under the Redevelopment Dissolution Law. See Section 34176 (g). If the funds, particularly bond proceeds, are not retained, they will not be easily replaced by future allocations of property tax revenues from the Redevelopment Property Tax Trust Fund ("RPTTF"), which generally will provide less funding than the bond proceeds. As described in various transmittals from the Successor Agency to the Oversight Board and DOF, the existing enforceable obligations of the Successor Agency to create affordable housing are substantial, and the distribution of funds from the LMIHF to taxing entities thus would significantly impair or prevent the Successor Agency and MOH, as Housing Successor, from fulfilling these valid enforceable obligations. Replacement funds are simply not available in the required amount or timeframe needed to fully satisfy these obligations.

3. The transfer of the encumbered LMIHF balance to the Housing Successor was valid.

DOF does not explain the basis for its determination that the transfer of housing assets to MOH was invalid. In fact, the Oversight Board approved, in March 2012, the transfer of encumbered balances in the LMIHF to the Housing Successor under the statutory authority that was then in effect (Statutes 2011, chapter 5, section 7). Under former Section 34181(c), the Oversight Board was authorized to “transfer housing responsibilities and all rights, powers, duties, and obligations along with any amounts on deposit in the Low and Moderate Income Housing Fund to the appropriate entity pursuant to Section 34176.” The Oversight Board ratified, by Resolution No. 3-2012, the transfer of the encumbered balance of the LMIHF to MOH. DOF did not object to this action.

4. DOF’s approval of the Housing Asset Transfer to MOH authorized the Housing Successor to use the LMIHF balance.

DOF approved, in a letter dated September 7, 2012, the transfer of the Redevelopment Agency’s housing assets, including the $110 million that DOF now seeks to redistribute, to the Housing Successor. Under Section 34176 (d), the effect of this approval was to authorize, among other things, the Housing Successor to use those funds to satisfy the enforceable obligations that had been identified in the Housing Asset Transfer Form and in the previously-approved ROPS for affordable housing purposes. Furthermore, Section 34176 (g) (1) (A) authorizes the Housing Successor, after DOF’s approval of the transfer, to “designate the use of and commit indebtedness obligation proceeds that remain after the satisfaction of enforceable obligations that have been approved in a [ROPS] and that

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4 Even under the current version of the Redevelopment Dissolution Law, as amended by AB 1484, the Oversight Board has the authority to “transfer housing assets pursuant to Section 34176.” Section 34181 (c). Housing asset are defined to include “any funds encumbered by an enforceable obligation to build or acquire low- and moderate-income housing.” Section 34176 (e) (2).
are consistent with the indebtedness obligation covenants... Enforceable obligations may be satisfied by the creation of reserves for the projects that are the subject of the enforceable obligation that are consistent with the contractual obligations for those projects, or by expending funds to complete the projects.\textsuperscript{5} For the reasons stated above, DOF's determination to redistribute $110 million of the LMIHF is inconsistent with that statutory authorization.

\textsuperscript{5} This authority conferred on housing successors is similar to the authority given to successor agencies after DOF has issued a Finding of Completion. Compare Section 34176 (g) (1) (A) and (g) (2) with Section 34191.4 (c) (2) (A).
December 14, 2012

Ms. Tiffany Bohee, Executive Director
City and County of San Francisco Successor Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Bohee:

Subject: Low and Moderate Income Housing Fund Due Diligence Review

This letter supersedes Finance’s original Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review (DDR) determination letter dated November 9, 2012. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City and County of San Francisco Successor Agency (Agency) submitted an oversight board approved LMIHF DDR to the California Department of Finance (Finance) on October 12, 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 November 26, 2012.

Based on a review of additional or clarifying information provided to Finance during the Meet and Confer process, and pursuant to HSC section 34179.6 (d), which authorizes Finance to make any and all necessary adjustments, Finance has come to the following conclusions:

- The February 1, 2012 transfer of cash out of the LMIHF to the Mayor of Housing in the amount of $195 million is not a valid transfer. Therefore, these funds must be returned to the Agency. Our review noted the Agency is eligible to retain $88 million of the $195 million as either a restricted balance or funding needed to satisfy approved fiscal year 2012-13 obligations. Specifically, the following is approved for retention:
  o Amount restricted by Federal and State Grant Funds totaling $5,910,745.
  o Amount reserved for approved ROPS II and III obligations totaling $82,345,2721.

As it relates to the remaining $107 million balance that Finance is requesting to be remitted to the county auditor controller, the Agency asserted that the balance includes bond proceeds, which are restricted from being distributed. However, based on the information received, Finance continues to maintain its position that these funds should be remitted for the reasons noted below. Finance notes that it is a rebuttable presumption that cash and cash equivalents are available to disburse to taxing entities (HSC 34179.5 (c) (6)). The burden of proof is on the Agency.

1 This amount reflects the ROPS III Meet and Confirm Determination letter dated December 14, 2012.
• Finance requested supporting documentation to trace the amount claimed as bond proceeds to the remaining balance listed in the accounting system; however, Finance was provided a PDF version of an Excel spreadsheet dated December 6, 2012. Spreadsheets are not considered accounting records nor do they demonstrate sufficient evidence to support ending balances. To further compound matters, it appears the Agency would need to employ outside auditors to perform a reconciliation of the spreadsheet to the accounting records, which could take a significant amount of time to complete.

It is our understanding that the Agency elected not to utilize a third party bond trustee to account for its bond proceeds, but instead tracks them with its own accounting system. It appears the Agency’s accounting system is not designed to provide detailed accounting records (i.e., general ledgers) per project. As such, Finance is unable to obtain verification of the balance of bond proceeds by the Agency or a third party.

• Section 2.06 of the loan agreements related to the use of bond proceeds requires the bond proceeds to be deposited into a separate account. It is our understanding that the Agency is commingling all bond proceeds in the Agency’s Operating Account. Therefore, it is not possible to determine the amount of bond proceeds included in the bank account balance.

The Agency provided Finance with a formal legal opinion on the matter of using separate accounts to track bond proceeds. The opinion did not disagree with section 2.06 of the loan agreement so long as the Agency’s accounting allows it to track the bond proceeds separately. It is our understanding that the Agency would need additional time and resources to provide this separate accounting of bond proceeds by project.

• The Agency contests that all funds are for all project areas are encumbered by enforceable obligations. HSC section 34179.5 (c)(5)(D) not only requires the Agency to submit a list of the enforceable obligations required for this amount, but to also include an analysis on the projection of annual revenues expected to be available in the future. This analysis shall include all future revenues received and demonstrate obligations being paid off over time. Finance requested a cash analysis from the Agency. Finance was told the spreadsheet (referred to above) was revised to include the cash analysis. However, this is not suitable evidence to demonstrate the Agency’s cash flow or need to retain funds. The spreadsheet provided is not supported by any financial records or accounting documents. Therefore, it is not possible to determine if any amount is needed.

• HSC section 33334.3 requires that all funds to be used on low and moderate income housing are to be held in a separate account. As mentioned above, the Agency commingles all funds into its Operating Account.
The Agency’s LMIHF balance available for distribution to the affected taxing entities is $106,906,356 (see table below).

<table>
<thead>
<tr>
<th>LMIHF Balances Available For Distribution To Taxing Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available Balance per DDR:</td>
</tr>
<tr>
<td>0</td>
</tr>
<tr>
<td>Finance Adjustments</td>
</tr>
<tr>
<td>Add: Disallowed transfers:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>$ 106,906,356</td>
</tr>
<tr>
<td>Total LMIHF available to be distributed: $ 106,906,356</td>
</tr>
</tbody>
</table>

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.

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 September 7, 2012 do not in any way eliminate the Controller’s authority.
Please direct inquiries to Justyn Howard, Assistant Program Budget Manager at (916) 445-1546.

Sincerely,

STEVE SZALAY
Local Government Consultant

cc:  Ms. Sally Oerth, Deputy Director, San Francisco
     Mr. James Whitaker, Property Manager, San Francisco
     California State Controller's Office
December 14, 2012

Ms. Tiffany Bohee, Executive Director  
City and County of San Francisco Successor Agency  
One South Van Ness Avenue, Fifth Floor  
San Francisco, CA  94103

Dear Ms. Bohee:

This letter is a follow-up to our Low and Moderate Income Housing Fund (LMIHF) Due Diligence Review Letter in which the California Department of Finance (Finance) relayed to the City and County of San Francisco Successor Agency (Agency) our decision related to the Meet and Confer session held on November 26, 2012.

Please be advised that Finance will not be pursuing the penalties outlined in HSC section 34179.6 at this time. Finance is committed to working with the Agency to satisfy any concerns we have related to the LMIHF balances that may or may not be available for distribution to the affected taxing entities.

We look forward to working cooperatively with you and your staff as we complete the exhaustive review that is necessary. If you have any questions or concerns regarding this matter, please contact Justyn Howard, Assistant Program Budget Manager, at (916) 445-1546.

Sincerely,

STEVE SZALAY  
Local Government Consultant
December 20, 2012

Steve Szalay
Local Government Consultant
California Department of Finance
State Capitol, Room 1145
Sacramento, CA 94814-4998

Re: Low and Moderate Income Housing Fund Due Diligence

Dear Mr. Szalay,

I am the Auditor-Controller for the City and County of San Francisco (the “City”) and write to confirm my understanding of the effect of the companion letters dated December 14, 2012 that the California Department of Finance (the “Department”) sent to Ms. Tiffany Bohee, Executive Director of the Successor Agency of the City and County of San Francisco (the “Successor Agency”), regarding the Department’s due diligence review of the Low and Moderate Income Housing Fund (“LMIHF”) Under AB 26 (2011), as amended by AB 1484 (2012) (collectively, the “Redevelopment Dissolution Law”), the City, as the successor housing agency, acquired the LMIHF and placed it under the administration of the Mayor’s Office of Housing (“MOH”), with approval of the Oversight Board, in connection with the dissolution of the Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”). Together, the two Department letters dated December 14, 2012 indicate that, pending another review, the Department has not made a final determination regarding the availability of the LMIHF for distribution to taxing entities. In the spirit of cooperation and in compliance with my duties as the county auditor-controller under Redevelopment Dissolution Law, I write this letter to confirm the next steps.

As a threshold matter, I want to assure you that my office is taking immediate steps, in coordination with the Successor Agency, to retain an independent auditor and develop proposed agreed-upon procedures to present to the Department for its review of the approximately $107 million in funds in the LMIHF for which the Department has identified concerns (the “Third Party Review”). The Third Party Review will be conducted by a nationally recognized certified public accounting firm, or a consortium headed by such a firm, with experience in Low and Moderate Income Housing Funds and bonds of former redevelopment agencies. The Successor Agency is already in discussions with firms regarding possible procedures that would primarily review the Agency’s receipt of bond proceeds and also test a statistically valid sample of all accounts. We intend to proceed with the Third Party Review as soon as possible, subject to the Department first having an opportunity to concur in the selection of the independent auditor and the agreed-upon procedures. In the procedures, we will propose an anticipated completion date for the Third Party Review. We expect that the Successor Agency will pay for the costs of the Third Party Review.

I understand that the Department’s December 14, 2012 determination letter regarding the transfer of the LMIHF is not final until the City and Successor Agency have an opportunity to complete the Third Party Review, followed by such additional review as the Department would deem necessary based on that audit.
Accordingly, pending the outcome of the Department’s review of the Third Party Review, the City may continue to hold the LMIHF consistent with the Redevelopment Dissolution Law, provided that (i) no funds will be expended from the approximately $107 million in the LMIHF that are the subject of the Third Party Review, and (ii) funds may be expended from the approximately $88 million balance in the LMIHF as needed to satisfy approved obligations (collectively, the “Fund Conditions”). During this period, and subject to satisfaction of the Fund Conditions, I understand that neither the Department nor the State Controller will seek to compel a transfer of the LMIHF to the Successor Agency, that the Department will not seek any penalties or other remedies against the City for continuing to hold the LMIHF (including under California Health and Safety Code (“HSC”) section 34179.6), and that the State Controller will not seek to claw back assets or assert any offset against sales and use tax or property tax revenues to the City relating to the retention of the LMIHF under these circumstances (including under HSC sections 34167.5, 34178.8 and 34179.6).

I understand from the Successor Agency, based among other things on the December 12, 2012 opinion from its outside bond counsel referenced in the Department’s determination letter, that bond funds are properly accounted for in the LMIHF, consistent with the terms of enforceable obligations, tax laws, and with the requirements of the Redevelopment Dissolution Law, and that the Successor Agency expects that the Third Party Review will demonstrate that the portion of the LMIHF that the Department has expressed concern about are bond funds, subject to enforceable obligations and dedicated for affordable housing purposes. Moreover, the Successor Agency believes that it is in compliance with its bond covenants with respect to the expenditure of bond proceeds. Consistent with earlier ROPS submittals that the Department approved, with actions that the Successor Agency’s Oversight Board has taken, and with the affordable housing asset list that MOH submitted and the Department approved under HSC section 34176(a)(2), the Successor Agency and MOH both maintain that all of the monies in the LMIHF are subject to enforceable obligations within the meaning of the Redevelopment Dissolution Law. But, if contrary to those expectations, the Third Party Review is not able to demonstrate that any part of the approximately $107 million of LMIHF is bond funds or is otherwise obligated, my office will, upon final determination by the Department, transfer such funds for distribution to the taxing entities to the extent required by the Redevelopment Dissolution Law and other applicable laws.

I look forward to working with your office to complete the Third Party Review, address the Department’s concerns and resolve this matter as expeditiously as possible. Please feel free to contact me with any questions or comments at (415) 554-7500.

Sincerely,

Ben Rosenfield
Auditor-Controller
City and County of San Francisco

cc: Controller John Chiang
Senator Mark Leno
Nancy McFadden, Executive Secretary for Legislation, Appointments, and Policy
Pedro Reyes, Chief Deputy Director, Policy
Mayor Ed Lee
Olson Lee, Director, Mayor’s Office of Housing
Tiffany Bohée, Executive Director, Successor Agency to the Redevelopment Agency of the City and County of San Francisco
Jeff Brownfield, Chief of Audit Division, State Controller’s Office
December 14, 2012

Ms. Tiffany Bohee, Executive Director
City and County of San Francisco Sucessor Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Bohee:

Subject: Request for Final and Conclusive Determination

On November 7, 2012, the City and County of San Francisco Sucessor Agency (Agency) submitted a petition to the Department of Finance (Finance) requesting written confirmation that its determination of four enforceable obligations as approved in a Recognized Obligation Payment Schedule (ROPS) is final and conclusive. The four obligations subject of the request are all connected to the Hunters' Point Shipyard/ Candlestick Point Project and are specifically listed on ROPS III (January 1, 2013 through June 30, 2013) as the following:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Project Name / Debt Obligation</th>
<th>Contract Execution Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>67</td>
<td>Phase 2 DDA &amp; Tax Increment Allocation Pledge Agreement</td>
<td>6/3/2010</td>
</tr>
<tr>
<td>123</td>
<td>Candlestick Point and Phase 2 of the Hunters Point Shipyard</td>
<td>6/3/2010</td>
</tr>
<tr>
<td>173</td>
<td>Disposition and Development Agreement -Hunters Point Shipyard Phase 1; affordable housing program funded by LMIHF for HPS Phase 1</td>
<td>12/2/2003</td>
</tr>
<tr>
<td>174</td>
<td>Phase 2 DDA &amp; Tax Increment Allocation Pledge Agreement (Housing Portion); affordable housing program funded by Low and Moderate Income Housing Fund (LMIHF) for CP-HPS2</td>
<td>6/3/2010</td>
</tr>
</tbody>
</table>

Finance has completed its review of the Agency’s petition, which included obtaining clarification on items provided and additional supporting documentation. Pursuant to Health and Safety Code section 34177.5 (i), we are pleased to inform you that the approval of Items 67, 123, 173 and 174 as listed on the approved ROPS III is final and conclusive. Finance’s review of these obligations in a future ROPS shall be limited to confirming that the requested payments are required by the prior enforceable obligation. This final and conclusive determination is only valid for the four items listed above.
Please be advised that there may be activities included in the enforceable obligations described in this letter that are permissive that the Agency may no longer have the statutory authority to carry out. This final and conclusive determination neither grants additional authority to the Agency nor does it authorize acts contrary to law. Additionally, any amendments to the above items are not subject to this final and conclusive determination.

Please direct inquiries to Justyn Howard, Assistant Program Budget Manager at (916) 445-1546.

Sincerely,

[Signature]

STEVE SZALAY
Local Government Consultant

cc: Ms. Sally Orth, Deputy Director, San Francisco
    Mr. James Whitaker, Property Manager, San Francisco
    California State Controller's Office