INFORMATIONAL MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Tiffany Bohee
Executive Director

SUBJECT: Update on Low & Moderate Income Housing Fund Due Diligence Review (LMIHF DDR), All Other Funds Due Diligence Review (AOF DDR), the Recognized Obligation Payment Schedule for July to December 2013 (ROPS 13-14A), and the Finding of Completion

EXECUTIVE SUMMARY

On May 17, 2013 the State Department of Finance (DOF) issued its final determination letters regarding the LMIHF DDR, the AOF DDR and ROPS 13-14A. For each of these matters, OCII had appealed DOF’s initial determinations through the Dissolution Law’s Meet and Confer process, and these letters represent DOF’s final determination.

For both the LMIHF and AOF DDRs, OCII stated that as of February 1, 2012, the $195 million in Housing Funds had been transferred to the City and County as the Housing Successor Agency and that the $204 million in Non-Housing Funds were either legally restricted or must be retained to meet enforceable obligations. DOF invalidated the transfer of the Housing Funds to the City and rejected OCII’s assertion that the Non-Housing Funds must be retained. DOF issued letters stating that OCII must remit $110 million of the Housing Funds and all of the $204 million in Non-Housing Funds, for a total of $314 million to be distributed to taxing entities. OCII appealed these determinations through DOF’s meet and confer process and, after working closely with the City’s Controller’s Office and the Mayor’s Office of Housing, conducted additional reviews including formal audits on restricted Housing Funds. As a result of this analysis and independent audits, OCII identified $7.8 million in Housing Funds and $959,000 in Non-Housing Funds that could be made available for distribution to taxing entities.

For the Housing DDR, DOF accepted the $7.8 million in Housing Funds but also required an additional $2.7 million be remitted, for a total of $10.5 million in Housing Funds. For the Non-Housing DDR, DOF accepted OCII’s proposal and determined that $959,000 be remitted for distribution. The total amount to be remitted is approximately $11.5 million, meaning that over $302 million in funding that DOF initially invalidated can now be retained by OCII to continue to fulfill its mission to revitalize the neighborhoods in Hunters Point Shipyard/Candlestick Point, Mission Bay, and around the future Transbay Transit Center, including the development of thousands of units of affordable housing, as well as complete remaining obligations in the Yerba Buena Center area. OCII remitted the required payments on May 23, 2013, which the Controller reported to DOF on May 28, 2013. As a result, DOF issued a Finding of Completion to OCII on May 29, 2013.

On ROPS 13-14A, DOF issued its initial determination letter on April 11, 2013, stating that a several items on the ROPS do not qualify as enforceable obligations. OCII appealed these
determinations through the meet and confer process and presented additional information to DOF in response to their questions. In the final determination letter on May 17, 2013, DOF reversed their initial determination on some of the items, but continued to disallow others. Below is a more detailed discussion of those issues.

DISCUSSION

**Low and Moderate Income Housing Fund Due Diligence Review**

As reported previously to the Commission, State Dissolution Law required all Successor Agencies to complete a Due Diligence Review (DDR) of all assets related to the Low and Moderate Income Housing Fund (LMIHF) by October 15, 2012. OCII complied with this requirement and engaged the certified public accounting firm of Macias Ginni and O’Connell (MGO) to complete the DDR. At that time it was the understanding of both OCII and the City that all assets related to the LMIHF had been transferred to the City, through the Mayor’s Office of Housing (MOH), as the Housing Successor Agency. Therefore the LMIHF DDR reflected that transfer and showed that the Successor Agency actually retained zero assets or balances related to the LMIHF.

On November 9, 2012 DOF however determined that any such transfer of funds was invalid and that $110 million in housing funds should be remitted to the City’s Controller for distribution to taxing entities. After a meet and confer process, DOF issued two letters on December 14, 2012. The first reiterated the invalidation of the transfer of funds to MOH and also determined that $107 million should be distributed to the taxing entities. The second letter reflected the fact that DOF recognized that additional information was needed to make a final determination, and therefore DOF was not requiring that any funds be remitted until another review could be undertaken.

OCII and the City engaged MGO to complete this second, more thorough review of the LMIHF, included three separate audits of any legally restricted funds: unspent bond proceeds, tax increment subject to pledge agreements (i.e. Mission Bay tax increment), and local exactions (i.e. Jobs Housing Linkage Fees from Transbay). In addition, MGO applied supplemental Agreed-Upon Procedures with the audited statements, including OCII’s audited financial statements for Fiscal Year 2011-2012 which were not completed at the time of the first LMIHF DDR, to determine any unobligated balances available for transfer to taxing entities. As shown in the attached Agreed-Upon Procedures and related audits, MGO identified $7,857,625 in surplus unrestricted funds that could be remitted to the City Controller for distribution to taxing entities. This revised LMIHF DDR was submitted to DOF on March 29, 2013.

**DOF Determination**

As expected, DOF concurred that the $7,857,625 is available for distribution to the taxing entities. In addition, DOF did not challenge OCII’s assertion that an additional $7.8 million in unrestricted funds must be retained in order to meet OCII’s obligation to fund the Alice Griffith Public Housing Revitalization project in Fiscal Year 2013-2014, which is a significant milestone for that project. However DOF did make two additional determinations (see Exhibit 1).
First, DOF disallowed $1,725,443 in expenditures made under ROPS II, stating that because these funds were “Other” (they were program income from the housing program, e.g. loan repayments, lease revenues, etc), they should be considered exclusive of the LMIHF. Second, DOF disallowed the retention of $994,864 based on adjustments made to ROPS III expenditures. For example, as part of the DDR process OCII proposed to use existing housing funds rather than request new RPTTF as was originally stated on ROPS III. DOF has chosen to ignore those adjustments and has determined that those items are not eligible to retain $994,864 in LMIHF.

Therefore, the total amount of DOF’s adjustments is $2,720,307. When added to the $7,857,625 identified by OCII in the revised LMIHF DDR submittal, the total amount of LMIHF available for distribution is $10,577,932. Under Dissolution Law, OCII had 5 business days from the date of the final determination letter to remit the funds with no possibility of appeal, meaning the payment had to be made by May 24, 2013. Staff determined that the $1.7 million in ROPS II disallowances could be covered by funds that would have been used in the second or third phases of the Hunters View Public Housing Replacement Project. Since the submittal of the LMIHF DDR, staff determined that the timing of those phases had shifted and that OCII’s obligation could be met by requesting additional RPTTF in subsequent ROPS periods.

For the $995,000 in ROPS III disallowances, staff determined that approximately one-third of the amount was related to the ongoing costs Single Family Homeownership Program; subsequent to the DDR process, OCII and MOH determined that those assets and costs should be considered as having transferred to MOH as the Housing Successor Agency. The remaining two-thirds of the amount is covered by a combination of project savings and shifting certain payments to the ROPS 13-14A period. OCII made the payment of $10,579,848 (which included $1,916 in interest) to the City Controller on May 23, 2013.

All Other Funds Due Diligence Review

On January 14, 2013 OCII submitted the DDR for the non-housing assets, known as the All Other Funds DDR, which was prepared by MGO. On April 1, 2013 DOF issued a determination letter to OCII stating that it was unable to determine what assets were legally restricted, despite those assets being listed in the DDR, and therefore determined that all $197 million in restricted funds should be remitted for distribution, along with $6.3 million in unrestricted funds, despite schedules in the DDR that showed those funds were needed to fulfill enforceable obligations. The total amount identified to be remitted was $204 million.

On April 8, 2013 staff submitted a request to meet and confer disputing this determination, citing previous documentation provided to DOF identifying $197 million in restricted funds, including $167 million in restricted trustee accounts, along with the detailed review by MGO in the DDR listing restricted bond proceeds, grant funds, and other restricted funds along with documentation of the legal restrictions. The majority of the $6.3 million in retained funds is also not distributable as $3 million of it is already authorized under ROPS III, and an additional $2.3 million of the remaining funds are needed to fulfill enforceable obligations relating to the Museum of African Diaspora and the Mexican Museum, both of which are in the expired Yerba Buena Center Redevelopment Project Area (YBC) and therefore there is no other source of funds to fund this obligation other than retained balances.
DOF Determination

During the meet and confer process, DOF acknowledged that the $167 million in trustee accounts was in fact restricted. OCII provided DOF with a revised analysis of the remaining unrestricted funds, documenting the amounts already captured under ROPS III and those amounts needed for the YBC obligations, which identified a total of approximately $959,000 in unrestricted funds that could be distributed to taxing entities. DOF concurred with this revised analysis and in their May 24, 2013 letter (Exhibit 2), determined that OCII must remit $959,147 in non-housing funds to the Controller for distribution to the taxing entities.

Similar to the LMIHF DDR, OCII had until May 24, 2013 to make the payment to the Controller. Staff had already identified unrestricted funds from administrative cost savings, and project areas such as Bayview Hunters Point, South of Market, and others where there were no longer any non-housing enforceable obligations that required unrestricted funds. OCII made the payment of $959,147 on May 23, 2013.

ROPS 13-14A

OCII submitted ROPS 13-14A, which covers the period from July to December 2013, to DOF on February 25, 2013. DOF issued a determination letter on April 11, 2013, stating that several items did not qualify as enforceable obligations. OCII appealed through the meet and confer process, and DOF’s final determinations as of the May 24, 2013 letter (Exhibit 3) are shown below.

Disputed Item: Item 2 – Project Staffing Costs
DOF disallowed the request for $969,000 in Redevelopment Property Tax Trust Funds (RPTTF) for project related staffing, stating that existing bond proceeds should be used instead.

Final Determination:
DOF is allowing $320,300 in RPTTF to be drawn down for project staffing, but the remaining $648,670 must be from bond proceeds. In the future, OCII must allocate project staffing costs for payment from available bond proceeds prior to requesting RPTTF.

Disputed Item: Item 85 – Mission Bay North CFD #4 Bonds
DOF disallowed $23.6 million in bond proceeds for a future bond issuance to pay off the existing bonds related to Mission Bay North Community Facilities District #4.

Final Determination:
No change; DOF states that bonds may only be approved on the ROPS after first receiving Oversight Board approval for the bond issuance, meaning that in the future the full process to approve the issuance of bonds must be completed with the Commission and Oversight Board prior to placing the bond issuance on the ROPS.
**Disputed Item: Item 86 & 88 – tax increment from Mission Bay North and South**

DOF denied the request for $27.4 million in non-housing tax increment from Mission Bay North and South under the Mission Bay Tax Increment Pledge Agreements, stating that they would need additional documentation to justify the amount requested. The majority of the funds requested are estimates based on one-time catch up of re-assessments and other corrections that would be made with the Assessor’s Office and the City Controller.

**Final Determination:**
DOF is allowing these funds since the actual amount OCIII will receive from the re-assessments and corrections will be verified by the Controller.

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**Disputed Item: Item 87 – $35 million in future bonds for Mission Bay South infrastructure**

Originally, DOF indicated it would partially approve this, but for a lower amount than was requested.

**Final Determination:**
DOF now fully denies this item. Similar to Item 85 above, DOF disallowed this on the ROPS as it was an estimate for an anticipated bond issuance and DOF’s position is that only bonds that have been fully approved through the Oversight Board may appear on the ROPS.

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**Disputed Item: Item 351 - $28.6 million request to offset ROPS III shortfall**

OCIIF had requested $28.6 million in RPTTF to reflect that same amount of shortfall in the ROPS III distribution (the amount was later revised down to $27.5 million); the reason for the request is that DOF requires that RPTTF distributed on June 1st may only be used in the following ROPS period, even though it is in the same fiscal year as the January 2nd distribution, meaning that OCIII couldn’t use any of those FY 2012-2013 tax increment to pay FY 2012-2013 obligations such as debt service payments that are made on June 30th of each year. DOF denied this request stating that OCIIF should have used the January 2nd distribution to pay debt service only and not any other obligations.

**Final Determination:**
DOF allowed for $20.8 million to cover the shortfall related to debt service only, but denied $6.7 million stating that the priority for RPTTF is debt service, not other obligations. The $6.7 million was to cover a variety of other staffing and other project delivery costs under ROPS III. Staff is currently reviewing those obligations but believes that the majority of those costs could be shifted to the ROPS 13-14A period, which would not impair OCIIF’s ability to fulfill those obligations.

A similar shift of ROPS 13-14A costs to the ROPS 13-14B would also be needed. These shifts in the timing of payment, while not ideal, may be a necessity given
DOF’s prohibition on using June property tax payments in that same fiscal year.

**Disputed Item: Reserve Balance Funding**
OCII requested to use $13 million in existing funds in the ROPS 13-14A period rather than draw down additional RPTTF. DOF initially rejected the use of any Reserve Funding, stating that all funds left at the end of ROPS III should be swept by the DDR process, and therefore changed the funding source for all of those items from Reserves to RPTTF.

**Final Determination:**
Through the meet and confer, OCII informed the DOF staff reviewing the ROPS that some of these items were simultaneously under review by other DOF staff as part of the DDR process, and that certain Reserve funded items would need to be retained in order to fulfill enforceable obligations. DOF reviewed the issue and determined that approximately $8.2 million could be retained as reserves, but the remaining funds would be shifted to RPTTF.

*Note:* Item 16, which requested the use of $785,000 in bond proceeds for a Grant Agreement with the Bayview Opera House was disallowed in the initial determination letter because it was a contract between the City and former Agency and therefore was not allowed under the Dissolution Law. OCII did not appeal this; however funds may be made available to this project now that OCII received its Finding of Completion from DOF. Dissolution Law allows successor agencies to request approval from the Oversight Board and DOF to use any unspent bond proceeds for eligible uses under the bond documents after receipt of the Finding of Completion.

**Administrative Cost Allowance**
In the initial determination letter in April, DOF adjusted the Administrative Cost Allowance based on changes to the RPPTTF amounts, reducing it from the requested $1,638,000 to $1,339,314. After applying all the changes in the May 24th final determination letter, the ACA has been revised again, this time it was increased to slightly higher than the original requested amount, to $1,641,000.

**NEXT STEPS & FINDING OF COMPLETION**
The DDR determinations allow OCII to retain funds for key affordable housing and infrastructure projects, including construction funds for the Alice Griffith HOPE SF public rebuild site, senior affordable housing at 5800 Third Street, and Phase II construction of the Hunters View HOPE SF site. Retained non-housing funds will ensure that necessary infrastructure improvements in the Mission Bay and Transbay areas can continue to be funded, and that funding for next year’s operations at the Museum of African Diaspora and for the construction of the tenant improvements for the future Mexican Museum will be made available.
The funds were remitted to the Controller’s Office on May 23rd, and as a result, DOF issued the Finding of Completion on May 29, 2013 (Exhibit 4). This is a significant milestone, as successor agencies that have received a Finding of Completion are then be able to use unspent bond proceeds for eligible projects and have any loan agreements between the City and OCII recognized as enforceable obligations.

The issuance of the Finding of Completion also sets the timeframe within which OCII must complete the Long Range Property Management Plan (LRPMP). The deadline to submit that plan is six months from the date of the letter, or November 29, 2013. Staff will provide additional information in the coming months regarding the LRPMP.

(Originated by Sally Oerth, Deputy Director)

[Signature]
Tiffany Bohac
Executive Director

Exhibit 4: Finding of Completion – May 29, 2013