MEMORANDUM

TO: Oversight Board

FROM: Tiffany Bohee, Executive Director

SUBJECT: Resolution approving the Initial Recognized Obligation Payments Schedule for January 1, 2012 to June 30, 2012 and Supporting Documentation

EXECUTIVE SUMMARY

ABx1 26 ("AB 26") requires, among other things, that successor agencies to former redevelopment agencies “continue to make payments due for enforceable obligations” based on an approved list of obligations. Cal. Health & Safety Code § 34177(a)(1). AB 26 requires this Oversight Board to review and approve a Recognized Obligation Payment Schedule ("ROPS") that describes the minimum payment amounts and due dates of payments required by those enforceable obligations for each six-month fiscal period. The initial ROPS must be submitted to the California Department of Finance ("DOF") no later than April 15, 2012, but is subject to an external audit that is underway and scheduled to be completed prior to July 1, 2012.

At the meeting on March 27th, staff presented the ROPS for the non-housing items in the Major Approved Development Projects (Mission Bay, Transbay, and Hunters Point Shipyard/Candlestick Point) as well as for those items relating to payments related to Agency issued bonds and required pass-through payments to taxing entities. At the meeting on March 29th, staff presented the remaining non-housing items for the remaining Project Areas: Bayview Hunters Point, South of Market, Rincon Point-South Beach, Western Addition A-2, and Yerba Buena Center, as well as explaining why no payments will be needed for both the Visitacion Valley Project Area and the Mid-Market Survey Area. In addition, staff presented the payments required for all housing obligations, the administrative expenses necessary to operate the Successor Agency to the former San Francisco Redevelopment Agency. Finally, staff presented information on the unspent bond proceeds that have not yet been obligated to specific contracts, but are nonetheless encumbered based on the covenants in the bond documents. Included in this memorandum is a summary of the information provided to the Oversight Board for the meetings on March 27th and 29th, but the original memorandums are attached for your reference.

Since those meetings, staff has made certain changes to the ROPS. First, staff has reviewed the data in the various “Totals” column to ensure that there are no errors in those calculations. Additional lines have now been added to reflect the staffing costs, which were not yet finalized during last week’s presentations. Finally, there are a several other minor changes that have been made to a few lines, such as refining the timing of payments or providing more detailed information in the “Notes” column.
The ROPS itself includes six distinct worksheets. They are 1) Non-Housing (All Project Area related payments and Administrative payments), 2) Housing, 3) Bonds, 4) Pass-Through Payments, 5) Unspent Bond Proceeds – Non-Housing, and 6) Unspent Bond Proceeds – Housing. Staff is now seeking the Oversight Board’s approval of this ROPS before submitting the schedule to DOF and the State Controller prior to the April 15th deadline.

DISCUSSION

NON-HOUSING

The Non-Housing section of the ROPS refers to 1) all payments for the enforceable obligations relating to the work program for the Project Areas that are not related to the Agency’s affordable housing program and 2) the administrative expenses required for the Successor Agency’s ongoing work on those enforceable obligations. The staffing costs necessary to implement the enforceable obligations have been added to the ROPS, broken out by costs associated with the Major Approved Development Projects and those costs associated with the balance of the work.

Major Approved Development Projects

In Resolution No 11-12, the Board of Supervisors identified three major integrated, multi-phase revitalization projects that are vital to the City’s future and will achieve numerous public benefits for the City, region and the State. These projects include (1) Phases One and Two of the Hunters Point Shipyard Redevelopment Project and Zone 1 of the Bayview Hunters Point Redevelopment Project (“Hunters Point Shipyard/Candlestick Point”), (2) the Mission Bay North and the Mission Bay South Redevelopment Projects (“Mission Bay”), and (3) parts of the Transbay Transit Center Redevelopment Project, including Zone 1 (“Transbay”). Collectively these are designated the "Major Approved Development Projects." Pursuant to a number of inter-related master developer agreements, the enforceable obligations for the Major Approved Development Projects include the continuing pledge, for the duration of those projects, of property tax revenues generated in the project areas (former tax increment) for building public infrastructure, public facilities and affordable housing.

The terms of the enforceable obligations for the Major Approved Development Projects specifically oblige the issuance of bonds or other evidences of indebtedness, with such bonds to be repaid through pledges of tax revenues. To fulfill the enforceable obligations with third parties under the Major Approved Development Projects, the City as Successor Agency must issue or otherwise ensure the issuance of new bonds secured by the pledges of property tax revenues from such areas or otherwise payable from such property tax revenues, subject to approval by the new oversight board and review by DOF under the process contemplated by AB 26. These enforceable obligations require a variety of actions of the Successor Agency in addition to issuing new debt, such as the acquisition and/or the disposition of property, the development of affordable housing, and the processing of land use approvals. A detailed analysis of the enforceable obligations for the Major Approved Development Projects is attached to the Oversight Board Resolution approving the ROPS. The items on the ROPS therefore demonstrate the flow of funds between the development entities and the Successor Agency and
the various implementation components required by the relevant existing agreement for the full build-out of these Major Approved Development Projects.

Non-Major Approved Development Projects

Outside of the Major Approved Development Projects, the Agency’s work program spanned numerous Redevelopment Project Areas (“Project Areas”) across the City. In the Bayview Hunters Point and South of Market Project Areas, the Agency’s economic development work was in process when AB 26 and the subsequent suspension of redevelopment activities went into effect in June 2011. These were “infill” Project Areas, where the Agency’s focus was on revitalizing existing neighborhoods through targeted economic development grant and loan programs, limited public improvements, and other efforts to eliminate blight including the creation of affordable housing. Due to AB 26, the Successor Agency will not be able to continue those programs going forward. The items on the ROPS therefore are for contracts that are winding down this fiscal year and will not be renewed, or are for matching funds required by federal grants.

In other cases, the Agency had completed the work program in those areas and the Agency’s role was either to manage the assets itself or to ensure compliance from other parties pursuant to long-term contractual agreements. In the Rincon Point-South Beach Project Area, the Project Area was still in effect; however, Agency’s work program has been largely completed, and therefore its activities were of an asset management nature, primarily dealing with properties owned by the Port of San Francisco as well as the operating the South Beach Harbor facility. For the Western Addition A-2 and Yerba Buena Center Project Areas, the Agency’s activities were also focused on asset management as those Project Areas had expired prior to the passage of AB 26 and include major cultural and public assets such as Yerba Buena Gardens. Many of these assets have their own underlying contracts and agreements which obligate the Successor Agency to continue to manage them, including making payments as indicated on the ROPS.

Finally, there are two areas in which there is no longer any basis for including payments on the ROPS. The Visitacion Valley Project Area was an active Project Area with a selected master developer; however, negotiations with the master developer with regard to the creation of an Owner Participation Agreement were still underway when the Agency was dissolved. Therefore, there are no underlying enforceable obligations on which to base any payments. For Mid-Market, the Agency had designated it as a Survey Areas, and had not yet been adopted as Redevelopment Project Area, which means no payments may be made.

Administrative Expenses

The lines related to the administrative costs of the Successor Agency represent the payments needed to cover the ongoing administrative expenses needed to operate the required office space, provide supplies, and other related expenses. Staff has projected these costs based on a reduced staff and expenses. Some of these costs may be covered by what AB 26 calls “Administrative Cost Allowance,” which is a percentage of the amount of tax increment that is allocated to the Successor Agency to cover the approved Enforceable Obligations. For the period covering February through June 2012, that percentage is 5%, which Agency staff in consultation with the
City’s Controller’s Office, has estimated to be approximately $3.1 million. For fiscal year 2012-2013, the Administrative Cost Allowance is calculated on 3% of the whole year, which is estimated to be approximately $3.2 million. AB 26 provides that some administrative costs can be allocated to project funds as they are related to the ongoing work of those enforceable obligations; those project funds may include developer reimbursements, tax increment, bond proceeds, etc.

**HOUSING**

The Agency’s Housing program created over 10,000 units of housing for low- and moderate-income households, spanning all types of housing including supportive, senior, and family rental housing as well as first-time homeownership opportunities. That program assisted housing, though loans, grants, and ownership of land in Project Areas as well as Citywide. The Mayor’s Office of Housing has been designated as the Housing Successor Agency per Board of Supervisors Resolution No. 11-12 and the Oversight Board Resolution No. 3-2012. The items shown on the ROPS represent all housing related payments.

Many of the items on the ROPS are related to existing contracts or other enforceable obligations (such as property management costs) that were in effect prior to AB 26 and must continue to be paid out per those agreements or obligations. Those are the items that appear for the January through June period.

Successor agency staff has also identified future commitments of property tax revenue (former tax increment) that are obligated to the Low- and Moderate-Income Housing Funds for affordable housing projects. Those payments are related to several long-term affordable housing enforceable obligations. First, there are the affordable housing projects that are required to be built in the Major Approved Development Projects pursuant to the master development agreements, which are legally binding and enforceable agreements. In the case of Transbay, the successor agency is also required to build a certain percentage of affordable housing under the California Public Resources Code, an obligation imposed by state law. Second, there are projects that fulfill part of a matching requirement under a federal grant, such as HUD’s Choice Neighborhood Grant, which requires the rebuild of the Alice Griffith Public Housing development and the development of an associated senior rental project located nearby at 5800 3rd Street.¹

Finally, there are projects that must be funded in order to satisfy a replacement housing obligation of the Agency. Since 1977, the Community Redevelopment Law has required the replacement of lower income housing that is destroyed or removed from the housing market as part of a redevelopment project. Cal. Health & Safety Code § 33413 (a). AB 26 did not repeal this requirement if the affordable housing had been destroyed prior to the effective date of AB 26. In 2003, the California Department of Housing and Community Development certified that the Agency had destroyed 6,709 affordable housing units prior to 1977 and had not replaced

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¹ The rebuild of the Alice Griffith Public Housing development is also required per the Hunters Point Shipyard Phase 2 DDA.
them. Notably, the vast majority of lost affordable units were from three project areas: Yerba Buena Center (3,217 units), Western Addition A-1 (3,208 units) and Golden Gateway (1,301 units).

As described in the memorandum for the March 29th meeting, in 2000 the Agency and City sought a way to fund new affordable housing that could replace some of those demolished units. Then-Senator John Burton authored the state legislation that provided San Francisco with the authority to finance replacement housing. Senate Bill No. 2113, Statutes 2000, chapter 661 (codified in Section 33333.7 of the California Health and Safety Code) ("SB 2113"). This special legislation authorized San Francisco to extend the tax increment authority of older Project Areas that were going to expire for the exclusive purpose of receiving tax increment and incurring indebtedness to replace the destroyed affordable housing in San Francisco.

In 2001, the state legislature enacted additional legislation, Senate Bill No. 211, Statutes 2001, chapter 741, section 7 (codified in Section 33333.8 of the Health and Safety Code) ("SB 211") that required every redevelopment agency to fulfill replacement housing obligations and other affordable housing requirements irrespective of the termination of a redevelopment plan or other limits in a plan that might prevent the funding and fulfillment of the housing obligations. The Agency has relied on both SB 2113 and SB 211 to obtain tax increment funding from Project Areas (India Basin, Hunters Point, Golden Gateway, Rincon-Point South Beach, Western Addition A-2, and Yerba Buena Center) to assist in the development of almost 900 replacement housing units located across the City, leaving approximately 5,800 housing units to be replaced.

The replacement of the remaining 5,800 affordable units is a continuing obligation of the successor agency that requires the future allocation of property tax revenue under the terms of AB 26. The obligation to replace the affordable housing is imposed by state law under Sections 33413 (a), 33333.7, and 33333.8 of the Health and Safety Code. Furthermore, the amount of property tax revenue necessary to construct the replacement units is an amount "owing to the Low and Moderate Income Housing Fund [LMIHF]," which had not been paid as of the effective date of AB 26. Cal. Health & Safety Code § 34171 (d) (1) (G). Nonetheless, the specific amount of property tax revenue allocated for replacement housing in a time period covered by a particular ROPS is subject to the approval of this Oversight Board. Accordingly, the Oversight Board will have continuing authority to determine the appropriate amount for replacement housing in reviewing and approving future ROPS.

The ROPS includes lines that reflect estimates of the overall maximum amount of tax increment due to the LMIHF by Project Area, including Major Approved Development Projects and SB2113 Project Areas. Also included are the affordable housing projects needing such funding in the near term (e.g. in Fiscal Year 12/13) within the relevant Project Area section of the ROPS. The actual deposits into the LMIHF will depend on the actual project budget needs in the given fiscal year. As the ROPS evolves over time, additional lines will be added to reflect the next set of parcels and projects that are ready for development.

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2 Letter, J. Bornstein to M. Rosen (April 18, 2003).
**BONDS**

Bonds and their required debt services, reserve set-asides, and any other payments required under the indenture or similar documents governing the issuance of the outstanding bonds are listed first under AB 26’s definition of “Enforceable Obligation.” Furthermore, AB 26 directs County Auditor-Controller’s to make debt service payments first, after any pass-through payments to taxing entities, before any other obligations. The items on the ROPS’s Bond worksheet therefore show the debt service required to be paid on all outstanding tax increment bonds that were issued by the Agency. In addition, payments to Bond Trustees are also included.

**AB 1290 PASS-THROUGH PAYMENTS**

Payments of tax increment are required to be made to the San Francisco’s various taxing entities. The payments of those “Pass-Through Payments” based upon the December 2011 tax increment distribution to the Agency prior to dissolution are included in the ROPS. These are payments related to property tax increment distributed through January 31, 2012, and owed to the City and County of San Francisco, the San Francisco Community College District, the San Francisco Unified School District, the Bay Area Air Quality Management District, the Bay Area Rapid Transit District, and the Educational Revenue Augmentation Fund. After June 30, 2012 AB 1290 Pass-Through payments will no longer be on the obligation schedule as they will be paid directly by the City and County of San Francisco. An overview of the mechanics of AB 1290 pass-through calculations, the distributions to affected taxing entities, and the flow of tax increment funds under ABx1 26 going forward is attached and will be presented by a representative of the Office of the Controller at the April 10, 2012 Oversight Board meeting.

**UNSPENT BOND PROCEEDS – Non-Housing & Housing**

The Agency has unexpended proceeds from the issuance of bonds (either non-housing or affordable housing bonds) that were not yet in contractual agreements at the time of dissolution. Some of these bond proceeds are nevertheless still obligated to certain projects, for example the housing bond proceeds for the Alice Griffith Public Housing rebuild that are part of a matching funds requirement to a federal grant. In other cases, the applicable bond documentation contains bond covenants to spend the proceeds for redevelopment-related purposes, in particular for bonds issued on a tax-exempt basis. There is some ambiguity in AB 26 regarding the path for a Successor Agency or a Housing Successor to spend such unencumbered bond proceeds as contemplated by the bond documentation. If it were determined that any bond proceeds that were not subject to enforceable obligations as described above could not be spent for the purpose for which the bonds were issued, then the proceeds may be used to defease the bonds. In such a case, none of those funds would be distributed to the taxing entities.

**CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Adopting the Recognized Obligation Payment Schedule is not a project as defined by California Environmental Quality Act ("CEQA") Guidelines Sections 15378(b)(4) and 15378(b)(5). The ROPS fulfills a state law requirement and provides for payment of enforceable obligations as defined by state law, and therefore, is an Agency administrative and fiscal activity that will not
independently result in a physical change in the environment and is not subject to environmental review under CEQA.

NEXT STEPS

Once approved by the Oversight Board, the ROPS will be submitted to DOF by April 15th. DOF will then have three days to indicate any questions on any selected items. There is then a ten day period following that in which any additional materials or analysis must be submitted to DOF in order to assist them in their review. Payments may not be made on any selected items until DOF is satisfied in its review.

The action taken by the Oversight Board prior to April 15th is to approve the initial ROPS covering the period from January through June 2012 only. A new ROPS must be prepared for the period covering July through December 2012 and approved by the Oversight Board and sent to DOF by May 11, 2012. Staff will begin compiling that new ROPS upon approval of the current ROPS and will present that to the Oversight Board in late April.

(Originated by Sally Oerth)

Tiffany Bohee
Executive Director

Attachments:
Attachment 1: Oversight Board Memorandum, March 27, 2012 without attachments
Attachment 2: Oversight Board Memorandum, March 29, 2012 without attachments
Attachment 3: Presentation “Overview of AB 1290 Pass-Through Calculations”