

OAKLAND OVERSIGHT BOARD

MEMORANDUM

TO: Oakland Oversight Board
SUBJECT: Bond Expenditure Agreement

FROM: Fred Blackwell
DATE: July 29, 2013
ITEM: #3

RECOMMENDATION

Staff recommends that the Oversight Board for the Oakland Redevelopment Successor Agency (“ORSA”) adopt a resolution approving a bond expenditure agreement between ORSA and the City of Oakland to transfer excess tax allocation bond proceeds not previously obligated to the City for bond-eligible purposes.

EXECUTIVE SUMMARY

Pursuant to AB 1484, the amended state legislation dissolving redevelopment agencies, ORSA is now allowed to create new obligations and spend so-called “excess” bond proceeds (i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project), since ORSA has received a “finding of completion” from the California Department of Finance (“DOF”). The spending must comply with bond covenants that restrict the use of bond proceeds to redevelopment activities within the project area for which the bonds were issued. In order to spend the excess bond funds, the newly-created excess bond proceeds obligations must be listed separately on the ROPS. Since DOF has informed staff they will not accept ROPS amendments, excess bond obligations cannot be paid during the current ROPS period and have to wait for January 2014 when ROPS 13-14B is effective.

The Bond Expenditure Agreement between the City and ORSA will authorize the transfer of all excess bond funds that are currently on hand by ORSA to the City during the ROPS 13-14B period in order to complete projects and activities consistent with the bond covenants for which these bonds were issued. Staff plans to include two new sections on ROPS 13-14B with respect to excess bond proceeds – the first will cover projects and programs previously funded by the former Redevelopment Agency and contracted by the City totaling \$33.2 million. The second will cover additional excess amounts that were not obligated at the time of dissolution, which will be governed by the Bond Expenditure Agreement. ROPS 13-14B will come before the Oversight Board for approval on September 23, 2013.

OUTCOME

Adoption of this legislation will authorize the Bond Expenditure Agreement between the City and ORSA, and allow the Bond Expenditure Agreement to be included on ROPS 13-14B as an excess bond proceeds obligation. The City will then complete new projects previously planned for in various Redevelopment Agency capital budgets prior to the dissolution of redevelopment, and new projects beginning in January 2014 upon approval of ROPS 13-14B by the Oversight Board and DOF.

The purpose of the Bond Expenditure Agreement is to facilitate the efficient and timely use of bond funds by the City by giving the City immediate access to such funds and the flexibility it needs to spend such funds on eligible projects. Prompt and successful development of these projects will benefit the taxing entities in the form of increased tax revenues and other community development benefits. Without the Bond Expenditure Agreement, each use of excess bond proceeds on a project would have to be individually listed on a ROPS, and the City would have to wait until the next available ROPS period, which could be as much as six months or longer given the ROPS development and approval process, to access such funds after a use has been identified. For instance, if the City approves a Façade Improvement Grant to a property owner in November, 2013, that funding would not be available to the grantee until July, 2014, because ROPS 13-14B (covering the first half of 2014) would already have been submitted to DOF at that point, and ROPS 14-15A, starting in July, 2014, would be the next available ROPS. Any increases in funding or other significant changes to previously-approved uses would also have to wait for the next available ROPS period. (DOF is not allowing successor agencies to amend their ROPS during a ROPS period.) This would significantly delay projects, in some cases making projects infeasible, increase costs, and cause other practical difficulties in moving projects forward.

BACKGROUND/LEGISLATIVE HISTORY

On June 27, 2012, the State legislature passed a budget trailer bill that clarified and amended certain portions of ABX 26. The trailer bill, among other things, provides certain benefits to successor agencies that have made specified payments and have received a finding of completion from the DOF. A successor agency is eligible to receive a finding of completion upon making three payments: the July 2012 “true-up” payment, the Housing Due Diligence Review (“DDR”) payment and the Other Funds and Accounts DDR payment. ORSA has made all three payments totaling \$62.5 million and received its finding of completion on May 29, 2013. One of the benefits of receiving a finding of completion is the ability to use unobligated pre-2011 tax allocation bond proceeds, aka “excess bond proceeds,” for new obligations, as long as the funds are used for the purposes for which the bonds were sold, i.e., the uses are consistent with the original bond covenants.

ANALYSIS

1. EXCESS BOND PROCEEDS:

Currently the amount of unobligated pre-2011 bond funds held by ORSA, or held by the City that the State Controller will likely order to be returned to ORSA, totals over \$90 million. Of this amount, \$33.2 million will be placed on ROPS 13-14B as excess bond proceeds obligations to cover specific projects and programs previously funded by the former Redevelopment Agency and contracted by the City that were either disallowed by DOF and/or are expected to be “clawed back” by the State Controller, but which are now eligible for funding since ORSA has received a finding of completion. The remaining amount totaling \$57.7 million will be governed by the Bond Expenditure Agreement, which will also be placed on the ROPS 13-14B as another excess bond proceeds obligation. Excess bond funds are broken down by project area as follows:

- Broadway/MacArthur/San Pablo – \$1.77 million
- Central City East – \$37.2 million
- Central District – \$30.5 million
- Coliseum – \$22 million

2. ELEMENTS OF BOND EXPENDITURE AGREEMENT:

The Bond Expenditure Agreement will be a master agreement between the City and ORSA transferring excess bond proceeds to the City and authorizing the City to use such proceeds, consistent with bond covenants, on projects and programs. The City has adopted a Bond Spending Plan (*see Attachment A*) authorizing the use of excess bond proceeds on several broad categories of projects and activities, including:

- Improvements to public facilities;
- Façade and tenant improvement grants to businesses and property owners;
- Streetscapes;
- Parking garage development projects;
- Retail development projects;
- Neighborhood Project Initiative grants for small scale neighborhood improvements;
- Specific Plan development; and
- Revolving business loans that serve redevelopment purposes.

For informational purposes only, please see *Attachment B* for the current draft of the Bond Expenditure Agreement. The Bond Expenditure Agreement will not be finalized and executed until after Oversight Board and DOF approval. The Bond Expenditure Agreement will allow the City to shift allocations of excess bond funds between projects and activities, and fund new projects and activities, as long as the activities are within designated project areas and consistent with the bond covenants.

The Bond Expenditure Agreement also allows for the transfer of any future excess bond proceeds held by ORSA to the City to be used for purposes consistent with the bond covenants. Future excess bond proceeds would be generated, for example, when there are savings on a

bond-funded ROPS project, or when a ROPS project has terminated and bond funds allocated to the project are unused. There are approximately \$16 million in remaining bond-funded obligations on the ROPS, but only a small portion of this may become available after the projects are completed or terminated.

Future excess bond proceeds may also include income received on bond-funded projects. Under applicable law and bond covenants, the revenues produced by bond-funded activities do not lose their character as bond funds and will continue to be restricted to uses consistent with the bond covenants in the indenture, such as retiring the bonds or investing in other capital projects meeting a redevelopment purpose within the applicable redevelopment project area. Such revenue may include land sale proceeds, lease revenue, loan principal and interest payments, etc. See **Attachment C** for Bond Counsel Memoranda regarding recycled bond proceeds (which were previously provided to the Board prior to consideration of the Long-Range Property Management Plan). Any future excess bond proceeds held by ORSA will be transferred to the City via the Bond Expenditure Agreement by placing the amounts on the next available ROPS.

Income received by the City on projects funded under the Bond Expenditure Agreement would be retained by the City and used for other bond-eligible uses.

3. SOURCE OF FUNDING:

The source of funding for the Bond Expenditure Agreement is excess (i.e., unobligated) pre-2011 tax allocation bonds, which are restricted to redevelopment activities within the project areas for which they were issued. Nearly all redevelopment bond proceeds had been appropriated and allocated through a Redevelopment Agency capital budget prior to the dissolution of the Redevelopment Agency. However upon dissolution of the Agency, if the bond proceeds had not been formally obligated with an executed third party agreement entered into by the Redevelopment Agency prior to June 28, 2011, DOF determined that those proceeds could not be spent until a finding of completion was received by ORSA. The excess bond proceeds originate from the following:

- Unobligated bond proceeds held by ORSA;
- Bond proceeds expected to be returned to ORSA that were used to fund property purchases by the Redevelopment Agency from the City (such as the Henry J. Kaiser Convention Center); these asset transfers are expected to be reversed by the State Controller's Office per the Controller's clawback authority;
- Bond proceeds expected to be returned to ORSA by the State Controller's Office that were intended to pay for work on City contracts pursuant to the Funding Agreement between the City and the Redevelopment Agency.

4. FISCAL IMPACT

The projects or programs costs covered by the Bond Expenditure Agreement will not require any funding from the Redevelopment Property Tax Trust Fund (former tax increment). The excess (unobligated) pre-2011 bond funds that will be used for these projects and programs are restricted to redevelopment activities within the project area for which they were issued. These projects and programs funded with current or future restricted bond proceeds will have long-term economic benefits for all taxing entities, including jobs and increased tax revenues, such as property taxes.

For questions regarding this report, please contact Sarah Schlenk, Agency Administrative Manager, at (510) 238-3982.

Respectfully submitted,

/s/

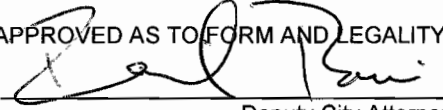
Fred Blackwell,
Assistant City Administrator

Attachment A: City's Adopted Bond Spending Plan

Attachment B: Draft Bond Expenditure Agreement

Attachment C: Bond Counsel Memoranda re: Recycled Bond Proceeds

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2013 JUN 27 PM 3:29

APPROVED AS TO FORM AND LEGALITY:

Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 84516 C.M.S.

A RESOLUTION (1) APPROVING A PLAN FOR SPENDING EXCESS TAX ALLOCATION BOND PROCEEDS, (2) AUTHORIZING A BOND EXPENDITURE AGREEMENT WITH THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY TO TRANSFER SUCH FUNDS TO THE CITY FOR BOND-ELIGIBLE PURPOSES, (3) ACCEPTING EXCESS BOND FUNDS, (4) APPROPRIATING AND ALLOCATING SUCH FUNDS TO PROJECTS AND PROGRAMS CONSISTENT WITH THE BOND EXPENDITURE AGREEMENT AND THE SPENDING PLAN, AND (5) APPROVING THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY'S SCHEDULE FOR REPAYMENT OF LOAN INDEBTEDNESS TO THE CITY FOR WEST OAKLAND REDEVELOPMENT PROJECTS FINANCED BY THE CITY

WHEREAS, the Oakland Redevelopment Successor Agency ("ORSA") has succeeded to the authority, rights, powers, duties and obligations of the Redevelopment Agency of the City of Oakland under the Community Redevelopment Law; and

WHEREAS, ORSA received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on May 29, 2013; and

WHEREAS, Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold; and

WHEREAS, ORSA has and will have so-called "excess" bond proceeds, i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project; and

WHEREAS, ORSA wishes to use such proceeds for redevelopment purposes consistent with bond covenants; and

WHEREAS, the Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) provides for a cooperative relationship between redevelopment agencies, and their successor agencies, and cities; and

WHEREAS, the Community Redevelopment Law (Health and Safety Code Section 33220(e)) authorizes a local public agency to enter into an agreement with a redevelopment agency, and its successor agency, to further redevelopment purposes; and

WHEREAS, the City desires to accept excess tax allocation bond proceeds from ORSA and to undertake redevelopment activities in support of certain projects and programs eligible for redevelopment funding on behalf of ORSA, using such bond proceeds in a manner consistent with the original bond covenants; and

WHEREAS, the City and ORSA desire to enter into a Bond Expenditure Agreement to govern funding to the City for the costs of those projects and programs from current and future excess tax allocation bond proceeds; and

WHEREAS, the City has developed a spending plan for the excess tax allocation bond proceeds consistent with the original bond covenants; and

WHEREAS, the Community Redevelopment Law (Health and Safety Code Sections 33445 and 33679) authorizes a redevelopment agency, and its successor agency, to pay for the acquisition and development costs of publicly-owned buildings, facilities and improvements, if certain findings are made; and

WHEREAS, Health and Safety Code Section 34191.4(b) provides that, after a successor agency has received a finding of completion and upon application by the successor agency, loans between the redevelopment agency and its sponsoring city may be deemed enforceable obligations, and thus payable from Real Property Tax Trust Funds over time, within certain limitations and under certain conditions; and

WHEREAS, redevelopment funds totaling \$2.69 million were committed by the former Redevelopment Agency to the City to pay for certain public improvements and grants to private entities in the West Oakland Redevelopment Project Area via a Cooperation Agreement entered into between the City and the Redevelopment Agency in 2004 and a Funding Agreement between the City and the Redevelopment Agency entered into in 2011; and

WHEREAS, these funding commitments were for projects and programs to alleviate physical and economic blight conditions in the West Oakland Redevelopment Project Area and were thus made for legitimate redevelopment purposes under the Community Redevelopment Law; and

WHEREAS, the City self-financed the cost of this work from its General Purpose funds with the understanding that the Redevelopment Agency would use redevelopment funds to reimburse the City for its costs under the terms of the Cooperation Agreement and the Funding Agreement; and

WHEREAS, these redevelopment funds have since been swept to the taxing entities following the completion of the "Due Diligence Review" of available nonhousing assets by the California Department of Finance pursuant to Health and Safety Code Section 34179.6, and

this has resulted in an outstanding unpaid loan debt to the City of \$2.69 million plus interest; and

WHEREAS, the ORSA Board has established a loan repayment schedule for amortizing this debt; and

WHEREAS, the City wishes to approve such schedule; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator to negotiate and execute a Bond Expenditure Agreement with ORSA to transfer excess tax allocation bond proceeds to the City to fund redevelopment projects and programs not previously funded and obligated by ORSA or the City, consistent with the bond covenants, in furtherance of the purposes of the redevelopment under the California Community Redevelopment Law; and be it further

RESOLVED: That the City Administrator or his or her designee is authorized to accept excess tax allocation bond proceeds from ORSA under the Bond Expenditure Agreement or otherwise, including excess bond proceeds currently held by ORSA and any future excess bond proceeds received or held by ORSA; and be it further

RESOLVED: That the City Council hereby approves that spending plan for excess bond proceeds set forth in Exhibit A to this Resolution; and be it further

RESOLVED: That the City Council hereby appropriates and allocates excess tax allocation bond proceeds received from ORSA under the Bond Expenditure Agreement or otherwise to the projects and programs set forth in the approved spending plan; and be it further

RESOLVED: That City Administrator or his or her designee is authorized to transfer funds between approved projects or programs specified in the spending plan within each project area, as necessary to complete the projects and programs; and be it further

RESOLVED: That with respect to those projects listed in the spending plan that are or will be owned by the City, the City Council hereby consents to excess tax allocation bond funding of said projects from ORSA, and hereby finds and determines as follows:

- 1) That the acquisition of land and the installation or construction of the projects will be of benefit to Oakland's redevelopment project areas by helping to eliminate one or more blight conditions within the project areas; and
- 2) That due to fiscal constraints on the City's general fund and the high number of capital projects competing for limited City funds, the City's Capital Improvement Program budget is unable to provide funding for the projects, and therefore no other reasonable means of financing the projects are available to the City other than ORSA funding; and
- 3) That the use of excess bond proceeds for the projects is consistent with the implementation plans adopted for each of the City's redevelopment project areas; and be it further

RESOLVED: That any expenditure of excess bond proceeds under the spending plan shall be in conformance with applicable bond covenants; and be it further

RESOLVED: That City Administrator or his or her designee will return to Council to appropriate or allocate excess bond proceeds beyond what is listed in the spending plan approved by this Resolution; and be it further

RESOLVED: That the City Council hereby approves that loan repayment schedule for amortization of the West Oakland loan established by ORSA attached to this Resolution as Exhibit B; and be it further

RESOLVED: That, since the approval of the spending plan, Bond Expenditure Agreement and West Oakland loan through this Resolution does not commit the City to any action that may have a significant impact on the environment, and in some cases relates to projects that have already been approved for funding, this action does not constitute a project or discretionary action subject to, and is exempt from, the requirements of the California Environmental Quality Act; and be it further

RESOLVED: That the City Administrator or his or her designee is authorized to take other action with respect to the projects, the Bond Expenditure Agreement, the spending plan, and the West Oakland loan consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That the Bond Expenditure Agreement shall be reviewed and approved by the Office of the City Attorney as to form and legality, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 16 2013, 2013

PASSED BY THE FOLLOWING VOTE:

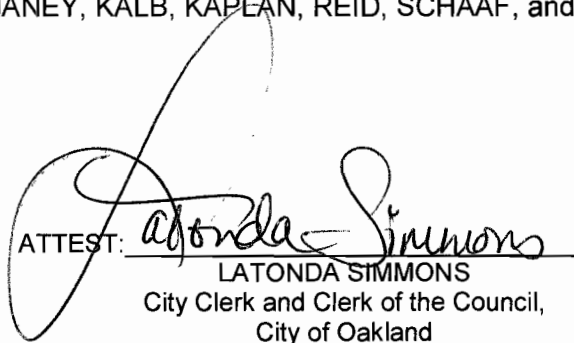
AYES- BROOKS, GALLO, GIBSON McELHANEY, KALB, KAPLAN, REID, SCHAAF, and
PRESIDENT KERNIGHAN - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:


LATONDA SIMMONS
City Clerk and Clerk of the Council,
City of Oakland

A RESOLUTION (1) APPROVING A PLAN FOR SPENDING EXCESS TAX ALLOCATION BOND PROCEEDS, (2) AUTHORIZING A BOND EXPENDITURE AGREEMENT WITH THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY TO TRANSFER SUCH FUNDS TO THE CITY FOR BOND-ELIGIBLE PURPOSES, (3) ACCEPTING SUCH FUNDS, (4) APPROPRIATING AND ALLOCATING SUCH FUNDS TO PROJECTS AND PROGRAMS CONSISTENT WITH THE BOND EXPENDITURE AGREEMENT AND THE SPENDING PLAN, AND (5) APPROVING ORSA'S SCHEDULE FOR REPAYMENT OF LOAN INDEBTEDNESS TO THE CITY FOR WEST OAKLAND REDEVELOPMENT PROJECTS FINANCED BY THE CITY

EXHIBIT A

EXCESS BOND PROCEEDS SPENDING PLAN

(attached)

**BROADWAY MACARTHUR SAN PABLO REDEVELOPMENT PROJECT AREA
EXCESS BOND SPENDING PLAN****Source and Use Summary****Sources:**

BMSP - Series 2006 and 2010 Unencumbered Bonds	1,766,570
TOTAL:	\$1,766,570

Uses:

Façade & Tenant Improvement Program	297,760
Small Business Loan Program	200,000
Oakland Housing Authority Solar Grant	100,000

Funding Agreement Projects

Tenant Improvement Program	67,610
Façade Improvement Program	62,500
Mosswood Teen Center	12,000
Golden Gate Recreation Center Improvements	930,800
Broadway Specific Plan	95,900
TOTAL:	1,766,570

Net Available: **\$0**

CENTRAL CITY EAST REDEVELOPMENT PROJECT AREA EXCESS BOND SPENDING PLAN

Source and Use Summary

Sources:

Central City East 2006 T and TE Unencumbered Bond Funds	8,787,936
Central City East 2006 T and TE Funding Agreement	17,713,398
Central City East 2006 T Property Reversals	10,700,000
TOTAL:	\$37,201,334

Uses:

Streetscapes	4,850,000
Major Projects	5,100,000
Public Facilities and Infrastructure Improvements	3,400,000
5th Avenue Streetscape	3,000,000
Façade Improvement Program	500,000
Tenant Improvement Program	500,000
Notice of Development Opportunity Sites	500,000
Impact Fee Nexus Study	200,000
Foothill & Seminary Development	150,000
Graffiti Abatement and Misc. Programs	388,637

Funding Agreement Projects

14th Avenue Streetscape	5,960,000
Foothill Seminary Streetscape Project	5,093,750
Foothill High Melrose Streetscape	4,309,698
East 18th Street Streetscape	1,600,000
Foothill Fruitvale Streetscape, Phase II	500,000
MacArthur Streetscape	300,000
Foothill Fruitvale Streetscape, Phase I	200,000
Façade Improvement Program	155,000
Architectural Design Professional Services	120,000
3550 Foothill demolition	106,406
Tenant Improvement Program	90,000
Ballpark negotiations expert consulting	55,000
23rd Avenue Streetscape	50,000
Graffiti Abatement	47,869
Video camera installation "Tough on Blight"	24,974
TOTAL:	\$37,201,334

Net Available: **\$0**

EXHIBIT A

CENTRAL DISTRICT REDEVELOPMENT PROJECT AREA EXCESS BOND SPENDING PLAN

Source and Use Summary

Sources:

Central District - Series 1986, 1989, 2003, 2005, 2006, 2009 Unencumbered Bonds	15,711,728
Central District - Series 1986, 1989, 2003, 2005 Funding Agreement	5,821,027
Central District - Series 2003, 2006	2,800,000
Central District - Series 2009 Property Reversals & Loan Repayments	6,196,264
TOTAL:	\$30,529,019

Uses:

Development - Broadway Retail Strategy/Downtown Parking	14,800,000
Public Facilities	3,500,000
Streetscapes	2,365,474
Façade & Tenant Improvement Program	1,400,000
Broadway Small Business Loan Program	700,000
Impact Fee Nexus Study	200,000

Funding Agreement Projects

Façade Improvement Program	1,562,000
Tenant Improvement Program	2,226,000
Malonga Casquelord Center	861,987
Uptown Temporary Art Park	46,861
Downtown Streetscape - BBRP	110,467
Basement Backfill (02, 05, 09, 10 BBRP)	400,000
Graffiti Abatement	40,000
1800 San Pablo - CEQA Work - SEIR	138,775
1800 San Pablo - Phase II	33,503
Broadway Shuttle	339,125
Broadway Specific Plan	187,881
Consolidated Partitions	19,276
HdL Contract	13,969
17th Street BART Public Art	321,000
Broadway Corridor Rev Loan Program	1,262,701
TOTAL:	30,529,019

Net Available: **\$0**

EXHIBIT A

**COLISEUM REDEVELOPMENT PROJECT AREA
EXCESS BOND SPENDING PLAN**
Source and Use Summary

Sources:

Coliseum - Series 2003, 2006 TE and 2006 T Unencumbered Bonds	11,015,910
Coliseum - Series 2003, 2006 TE and 2006 T Funding Agreement	6,741,968
Coliseum - Series 2006 T Bonds Property Reversals	4,277,393
TOTAL:	\$22,035,271

Uses:

Coliseum Transit Village Phase I	8,000,000
Coliseum City EIR and Specific Plan	2,000,000
Coliseum City Phase II Project	3,255,000
Façade Improvement Program	500,000
Tenant Improvement Program	300,000
Streetscape Contingency	500,000
Public Facility & Infrastructure Improvements	500,000
Graffiti Abate and Misc. Programs	289,950
Impact Fee Nexus Study	200,000

Funding Agreement Projects

Façade Improvement Program	245,000
Tenant Improvement Program	377,500
Graffiti Abatement	100,000
Tyrone Carney Park	180,000
Community Clean Up Corps	38,261
South Coliseum Way Streetscape	25,000
MLK Jr Library	368,107
Demolition Costs	661,661
Coliseum Truck Study	55,000
Coliseum City Master Developer ENA	1,600,000
Coliseum Infrastructure, Coliseum Way Drainage	978,687
BART Plaza Improvements	506,907
Coliseum Infrastructure Improvements	260,000
Coliseum Business Alert	14,000
Estuary Plan	570,000
66th Avenue Bldg Demolition	25,000
Video camera installation	15,800
Sunshine Court Streetscape	54,008
Coliseum Infrastructure Improvements	25,390
23rd Avenue Streetscape Improvements	390,000
TOTAL:	\$22,035,271

Net Available: \$0

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EXHIBIT B

WEST OAKLAND LOAN REPAYMENT SCHEDULE

(attached)

Exhibit B

West Oakland Loan Repayment Schedule

	FY 2012-13 Base Year	FY 2013-14 Estimate	FY 2014-15 Estimate	FY 2015-16 Estimate
Gross RPTTF	115,633,366	117,946,033	120,304,954	123,914,102
County Admin & Pass Through	(17,768,196)	(17,691,905)	(18,045,743)	(18,587,115)
ROPS	(65,173,770)	(63,573,511)	(57,227,314)	(62,105,703)
Residual	32,691,400	36,680,617	45,031,897	43,221,284
One-Half Residual Increment		1,994,609	6,170,248	5,264,942

Loan Repayment Schedule				
	FY 2013-14	FY 2014-15	FY 2015-16	TOTAL
Principal	896,511	896,512	896,512	2,689,535
Interest	5,071	5,071	5,070	15,212
TOTAL	901,582	901,583	901,582	2,704,747

March 2013 LAIF rate 0.28%

LOAN TERMS:

This loan originated in 2008 and is payable over a three-year period commencing in 2014. To the extent that the amount of Real Property Tax Trust Funds available for repayment in any given year is insufficient to make the full payment, the above scheduled payment amount will be reduced accordingly, and the repayment schedule for subsequent years then will be adjusted accordingly to provide for repayment of the full loan amount within the three-year term. Also, to the extent the amount of Real Property Tax Trust Funds available for repayment in any given year exceeds the above scheduled payment amount, the above scheduled payment amount will be increased, up to a maximum payment of one-half of the Real Property Tax Trust Funds available for repayment that year, and the repayment schedule for subsequent years then will be adjusted accordingly. For purposes of this schedule, "Real Property Tax Trust Funds available for repayment" means the maximum annual repayment amount as calculated under Health and Safety Code Section 34191.4(b)(2)(A).

[DRAFT 7/22/2013]

BOND EXPENDITURE AGREEMENT

This Bond Expenditure Agreement (the “Agreement”) is entered into effective _____, 2013, by and between the City of Oakland, a municipal corporation (the “City”), and the Oakland Redevelopment Successor Agency, successor agency to the Redevelopment Agency of the City of Oakland under Health and Safety Code Section 34173 (“ORSA”) pursuant to City Council Resolution No. _____ C.M.S., ORSA Resolution No. _____, and Oakland Oversight Board Resolution No. _____.

Recitals

A. ORSA received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on May 29, 2013

B. Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute “excess bond proceeds obligations” that shall be listed separately on the successor agency’s Recognized Obligation Payment Schedule (“ROPS”).

C. ORSA has and will have so-called “excess bond proceeds,” i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project or other enforceable obligation. ORSA wishes to use such proceeds for redevelopment purposes consistent with applicable bond covenants.

D. The California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies. Under Health and Safety Code Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Health and Safety Code Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes. Health and Safety Code Section 34178 allows a successor agency and its sponsoring city to enter into agreements with the approval of the oversight board.

E. ORSA desires to provide excess bond proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants, to undertake projects and programs that were not previously funded and obligated by ORSA or the City. The City has adopted a spending plan for using such excess bond proceeds (the “Bond Spending Plan”) to advance the City’s community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The City Council has found that the use of excess bond proceeds to fund projects that involve City-owned public buildings, facilities,

structures, or other improvements is in accordance with Health and Safety Code Sections 33445, 33445.1, and 33679 and other applicable law. The Oakland Oversight Board has determined that the expenditure of excess bond proceeds in accordance with this Agreement will benefit the affected taxing entities, and has approved the execution of this Agreement and the provision of excess bond proceeds to the City for the purposes described herein.

F. In order to facilitate the use of excess bond proceeds consistent with the bond covenants, ORSA and the City have negotiated this Agreement requiring the transfer of current and future excess bond proceeds by ORSA to the City, and the City's use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Section 34191.4(c)(2)(A) to be paid from excess bond proceeds. With Oversight Board approval, ORSA has listed this Agreement, and the requirement to transfer excess bond proceeds herein, on its Recognized Obligation Payment Schedule ("ROPS") for January through June of 2014 ("ROPS 13-14B") as an obligation to be funded with excess bond proceeds.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. RECITALS

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

2. DEFINITIONS

For purposes of this Agreement, the following terms shall have the indicated meaning:

The "Dissolution Law" means Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code, commencing with Section 34170, and other statutes governing the dissolution of redevelopment agencies and the wind-down of redevelopment activities.

"Bond Proceeds" mean (1) proceeds from tax allocation bonds issued on or before December 31, 2010, (2) rents, sale proceeds and other revenues generated by properties acquired and/or improved with proceeds from tax allocation bonds issued on or before December 31, 2010, (3) interest and principal paid on loans funded by proceeds from tax allocation bonds issued on or before December 31, 2010, and (4) other income or revenues generated from assets acquired or funded with proceeds from tax allocation bonds issued on or before December 31, 2010.

"Excess Bond Proceeds" means Bond Proceeds that are not needed to satisfy Enforceable Obligations approved on a ROPS.

"Enforceable Obligations" mean enforceable obligations, other than Excess Bond Proceeds obligations, as defined under the Dissolution Law.

"Bond Spending Plan" is defined in Recital E.

3. ORSA'S OBLIGATIONS

ORSA shall have the following obligations under this Agreement:

3.1. **CURRENT EXCESS BOND PROCEEDS.** ORSA shall transfer to the City, no later than January 31, 2014, Excess Bond Proceeds currently held by ORSA in an amount not to exceed \$.

3.2. **FUTURE EXCESS BOND PROCEEDS.** ORSA shall transfer to the City all future Excess Bond Proceeds held or received by ORSA. Such future Excess Bond Proceeds shall include, without limitation, (1) Bond Proceeds previously obligated to a project or other Enforceable Obligation that become unobligated for any reason, (2) Bond Proceeds that become available in the form of rents, sale proceeds, loan repayments, or other revenues that are generated by properties or other assets acquired and/or improved with Bond Proceeds and that are not otherwise obligated to a project or other Enforceable Obligation, and (3) any other funds held by ORSA that qualify as Excess Bond Proceeds under this Agreement.

The parties intend that payments of future Excess Bond Proceeds be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds shall be made pursuant to an approved ROPS within 30 days of the commencement of the relevant ROPS period. ORSA shall be responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are included on the next possible ROPS.

3.3. **PROJECTS FUNDED BY EXCESS BOND PROCEEDS.** ORSA assigns to the City all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. ORSA assigns to the City all contracts entered into by ORSA or the former Redevelopment Agency of the City of Oakland related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by ORSA relating to Enforceable Obligations.

4. CITY'S OBLIGATIONS

The City shall have the following obligations under this Agreement:

4.1. **EXCESS BOND PROCEEDS.** The City shall accept, hold, and disburse Excess Bond Proceeds transferred to the City by ORSA under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall retain any Excess Bond Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Bond Proceeds or payments on loans funded from Excess Bond Proceeds, without any obligation to return such funds to ORSA, and shall use such funds for uses consistent with applicable bond covenants.

The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity authorized under the Bond Spending Plan. However, the City must spend Excess Bond Proceeds consistent with the original bond covenants applicable to the particular Excess Bond Proceeds. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws. The City may transfer funds between approved projects, programs and activities, as long as

the transfer is within a single project area if applicable bond covenants restrict such funds to a particular project area.

The City assumes all contracts entered into by ORSA or the former Redevelopment Agency of the City of Oakland related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by ORSA relating to Enforceable Obligations. The City shall perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA, and shall timely complete the work required for each project.

4.2. BOND SPENDING PLAN. The City shall be solely responsible for maintaining and implementing the Bond Spending Plan. The City may amend the Bond Spending Plan as the City deems necessary in its sole discretion. Any amendments to the adopted Bond Spending Plan will consider uses that advance the City's community development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. Notwithstanding any contrary provision hereof, unless the City expressly agrees otherwise, the City shall not be obligated to provide funding for any program or project in an amount exceeding the Excess Bond Proceeds provided to the City pursuant to this Agreement.

5. ENTIRE AGREEMENT; WAIVERS; AND AMENDMENTS

5.1. This Agreement constitutes the entire understanding and agreement of the parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

5.2. This Agreement is intended solely for the benefit of the City and ORSA. Notwithstanding any reference in this Agreement to persons or entities other than the City and ORSA, there shall be no third party beneficiaries under this Agreement.

5.3. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

6. SEVERABILITY

If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

7. DEFAULT

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-

defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

8. BINDING ON SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

9. FURTHER ASSURANCES

Each party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this Agreement.

[SIGNATURES ON NEXT PAGE]

In witness whereof, the undersigned parties have executed this Bond Expenditure Agreement effective as of the date first above written.

“CITY”

THE CITY OF OAKLAND,
a municipal corporation

By: _____
City Administrator

Approved as to form and legality:

By: _____
Deputy City Attorney

“ORSA”

THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY,
successor agency to the Redevelopment Agency of the City of Oakland under Health and Safety Code Section 34173

By: _____
ORSA Administrator

Approved as to form and legality:

By: _____
ORSA Counsel



650 California Street
18th Floor
San Francisco, CA 94108
t. 415.391.5780
f. 415.391.5784

MEMORANDUM

TO: Daniel Rossi, Senior Deputy City Attorney
City of Oakland

FROM: Stephen Melikian, Jones Hall, A Professional Law Corporation

DATE: June 28, 2013

RE: Treatment of Recycled Bond Proceeds

INTRODUCTION

The Redevelopment Agency of the City of Oakland (the "Original Agency") has heretofore issued several series of both tax exempt and taxable tax allocation bonds (the "Tax Exempt Bonds" and the "Taxable Bonds" respectively and, collectively, the "Bonds"). Pursuant to the provisions of California Assembly Bill X1 26 (the "Dissolution Act"), which amended provisions of the California Redevelopment Law, being Health and Safety Code Section 33000, et.seq. (as amended, the "CRL") and the California Supreme Court's decision in California Redevelopment Association v. Matosantos, the Original Agency was dissolved on February 1, 2012 and, on February 1, 2012, the City, and later the Oakland Redevelopment Successor Agency (the "Successor Agency"), in accordance with and pursuant to the Dissolution Act, assumed the duties and obligations of the Original Agency as provided in the Dissolution Act, including all of the rights and obligation of the Original Agency with respect to the Tax Exempt Bonds and the Taxable Bonds.

You have informed us that in several instances that loans made with the proceeds of the Bonds have been repaid, or property purchased with the proceeds of the Bonds was sold for current consideration. Due to advice we provided you prior to the passage of the Dissolution Act, you have, to date, been treating both the loan repayments and the payment for property as recycled proceeds of the Bonds (the "Recycled Proceeds"). You have requested our views regarding how these Recycled Proceeds should be treated in light of the Dissolution Act.

We have previously shared with you a memorandum prepared by our tax partner, David Walton, generally relating to the treatment of recycled proceeds of tax exempt bonds. As we

Memorandum to Daniel Rossi
June 28, 2013
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believe that the tax covenants contained in the various bond documents relating to the issuance of the Tax Exempt Bonds clearly require that the advice in Mr. Walton's memorandum should be followed by the City and Successor Agency, this memorandum will only address the treatment of the Recycled Proceeds of the Taxable Bonds

QUESTION PRESENTED

How should the City and the Successor Agency treat the Recycled Proceeds of the Taxable Bonds?

CONCLUSION

The City and the Successor Agency should treat the Recycled Proceeds of the Taxable Bonds the same as it treats original proceeds of the Taxable Bonds.

DISCUSSION

The Original Agency issued its first series of bonds for each project area and for low and moderate income housing pursuant to separate indentures of trust, utilizing supplemental indentures for subsequent parity financings. Each of these indentures, and each of the supplements to these indentures, established a fund (the "Project Fund") to be held by the Trustee into which bond proceeds were deposited for purposes of financing the applicable redevelopment project. For example, Section 22.03 of the Third Supplemental Indenture between the Original Agency and The Bank of New York Mellon Trust Company, N.A., pursuant to which the Original Agency's Central District Redevelopment Project Subordinated Tax Allocation Bonds, Series 2009T (Federally Taxable) were issued, states, in part, as follows:

(a) There is hereby continued the Central District Redevelopment Project Redevelopment Fund (the "Redevelopment Fund"), which is held by the Trustee in trust for the benefit of the Agency. There is hereby established within the Redevelopment Fund an account to be held by the Trustee and to be known as the "Series 2009T Account". The moneys in the Series 2009T Account of the Redevelopment Fund shall be maintained separate and apart from other moneys of the Agency. The moneys on deposit in the Series 2009T Account of the Redevelopment Fund shall be used in the manner provided by the Law solely for the purpose of aiding in financing the Redevelopment Project, including, without limitation, the payment of any unpaid Costs of Issuance with respect to the Series 2009T Bonds. The Agency covenants that no funds on deposit in the Series 2009T Account of the Redevelopment Fund shall be applied for any purpose not authorized by the Law. Prior to their disbursement, amounts on deposit in the Series 2009T Account of the Redevelopment Fund may be invested in any investments in which the Agency is legally able to invest its funds, including Permitted Investments.

Prior to the passage of the Dissolution Act, bond counsel and redevelopment counsel firms generally advised their clients that Recycled Proceeds of taxable bonds should be deposited back into the fund that contained the original bond proceeds and continue to be used

Memorandum to Daniel Rossi
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for eligible redevelopment purposes, subject to the same restrictions under the CRL that governed the original bond proceeds. There were two separate reasons for this approach.

First, when spending proceeds of tax increment bond, redevelopment agencies were limited to only those uses for which tax increment revenues could be spent. Additionally, all of the requirements that redevelopment agencies needed to follow, such as making benefit findings and holding public hearings, with respect to expenditures of tax increment revenues also applied to the expenditure of bond proceeds. When a situation arose where amounts so expended were "repaid", whether by a third party or by the sale of a bond financed asset, bond counsel and redevelopment counsel believed that, absent any clear direction in the CRL, the Recycled Proceeds should be subject to the same limitations that initially applied to the original bond proceeds. This approach seems to be the one that best reflects the intent of the CRL, which was to use tax increment revenue and bond proceeds derived from tax increment to fund redevelopment projects, and not for general governmental purposes. If the expenditure of Recycled Proceeds were not treated in the same manner as original bond proceeds, then a redevelopment agency could have used taxable bond proceeds to buy undeveloped land, sold the land to a developer, and used the proceeds for a variety of purposes not related to the redevelopment of the project area from which the tax increment repaying the bonds was derived. While it could be argued that bond counsel and redevelopment counsel were being overly conservative, it is worth noting again that, absent any specific guidance from the CRL, this position best reflects the policy goals contained in the CRL.

Second, Recycled Proceeds could be considered as a return on investment of the original bond proceeds, similar to the interest earned by amounts on deposit in a Project Fund. When Recycled Proceeds are viewed from that perspective, the question becomes whether "bond proceeds" means only those amounts initially deposited into the Project Fund upon the issuance of the bonds, or does it also include these Recycled Proceeds?

The common law rule is that "interest is an accretion or increment to the principal fund earning it, and unless lawfully separated therefrom becomes a part thereof." (Pomona City School District v. Payne (1935) 9 Cal. App. 2d 510,516; Board of Law Library Trustees v. Lowery (1945) 67 Cal. App. 2d 480, 482; 71 Ops. Cal. Atty. Gen. 181 (1988)). In other words, the common law rule, which has been followed by the California courts, is that interest earned on a fund remains in such fund unless there is some other law or provision that requires or permits it to be transferred to another fund. Absent specific direction either in the CRL or in the applicable indenture or supplemental indenture regarding the disposition of Recycled Proceeds of the Taxable Bonds, extending this common law rule to the treatment of Recycled Proceeds of the Taxable Bonds best provides for the use of such Recycled Proceeds in a manner consistent with the CRL.

We are not able to find any other provision in the CRL (including the dissolution Act) that provides any other guidance as to treat Recycled Proceeds. Additionally, both the indentures and the supplemental indentures pursuant to which the Taxable Bonds were issued are silent on the treatment of Recycled Proceeds. Accordingly, our advice is to continue to treat Recycled Proceeds of the Original Agency's Taxable Bonds as they have previously been treated, and to deposit them back into the applicable Project Fund, to be disbursed as required by the applicable indenture or supplemental indenture.

JONES HALL
A PROFESSIONAL LAW CORPORATION

**CHANGE IN USE OF BOND PROCEEDS UNDER
THE 1997 PRIVATE ACTIVITY BOND REGULATIONS**

New final private activity bond regulations (the "Final Regulations") were released on January 10, 1997. The Final Regulations contain new and generally more flexible rules regarding the change in use of bond financed facilities and apply to all bonds issued after May 16, 1997. The Final Regulations permit an issuer to apply the provisions relating to change in use (i.e., §1.141-12) to any bonds issued before May 16, 1997, without applying the remainder of the Final Regulations to such bonds. This memorandum sets forth in general summary form some of the rules under the Final Regulations regarding a change in use of a bond financed facility. Caution, this memorandum is intended to be a general informational guide and summarizes only some of the major provisions concerning change in use. Specific proposals regarding a change in use of bond financed facilities should be discussed with a Jones Hall attorney for a complete analysis.

As a general rule, bonds are treated as private activity bonds if (i) as of the date of issue it is reasonably expected that the Private Business Tests (i.e., the private business use test and the private payment or security test) or the private loan financing test will be satisfied, or (ii) if, after the date of issue, a deliberate action is taken to cause the tests to be satisfied. A deliberate action is any action, such as a sale or lease of the bond financed facility, that is within the control of the issuer (involuntary acts are not deliberate actions). An action is not treated as deliberate action if five specified remedial action conditions are satisfied and if one of three alternative remedial actions is taken.

Five Remedial Action Conditions

The five required remedial action conditions that must be met are as follows:

- Reasonable Expectations. The issuer must reasonably expect on the issue date that the Private Business Tests and private loan financing test will not be met during the entire term of the bonds.
- Term Not Unreasonably Long. The term of the issue may not be unreasonably long (i.e., the weighted average maturity of the bonds may not be greater than 120 percent of the average reasonably expected economic life of the financed property).
- Fair Market Value Consideration. The terms of any arrangement resulting in satisfaction of the private activity bond tests must be bona fide and arm's-length and the new user must pay fair market value for the use of the financed property (taking into account use restrictions that serve a governmental purpose).
- Gross Proceeds for Arbitrage. Amounts received from the disposition of the property are "disposition proceeds" and must be treated as "gross proceeds" (i.e., bond proceeds) for arbitrage purposes. For temporary periods and rebate exemptions, the date of receipt of disposition proceeds may be treated as the issue date of the bonds. Also, for purposes of the expenditure exemptions to the rebate requirement, if those exemptions were satisfied before the date of receipt of the disposition proceeds, the receipt of disposition proceeds may be disregarded. Generally, prior to taking one of the remedial actions, the disposition proceeds may be invested at an unrestricted yield for (i) 3 years if an alternative use of disposition proceeds remedial action is taken, (ii) 90 days if the nonqualified bonds are redeemed, and (iii) 30 days if an escrow is created for the nonqualified bonds.
- Prior Expenditure. The proceeds affected by the deliberate action must have been expended on a governmental purpose before the action (except for a remedial action consisting of redemption of nonqualified bonds).

Three Alternative Types of Remedial Actions

If each of the five remedial action conditions described above are met, then one of the following three alternative remedial actions must be taken: (i) redemption of nonqualified bonds; (ii) alternate use of disposition proceeds so as to assure that the

Private Business Tests and the private loan financing test are not satisfied; or (iii) alternate use of the facility for a qualifying purpose. The requirements for each of these alternatives are as follows:

Redemption or Defeasance of Bonds

The redemption remedial action is satisfied if all of the "nonqualified bonds" are redeemed within 90 days of the date of the deliberate action; or, if not redeemed within 90 days, a defeasance escrow is established within 90 days. Redemption may be made from proceeds of tax-exempt bonds, but only if the bonds are qualified bonds, based upon the purchaser's use of the facility (e.g., a corporation could purchase a bond-financed parcel of land for use as a solid waste disposal facility and finance the acquisition with proceeds of qualified exempt facility private activity bonds). If there is a disposition of the financed property exclusively for cash, the redemption remedy is met if the disposition proceeds (i.e., the cash) are used to redeem a pro rata portion of the nonqualified bonds equal to the disposition proceeds (taking into account redemption premium) on the first call date after the deliberate action and if such first call date occurs more than 90 days after the deliberate action, create a defeasance escrow within 90 days of the deliberate action which redeems bonds on the first call date. If the disposition is *not* exclusively for cash, the issuer must either redeem all of the nonqualified bonds within 90 days of the deliberate action or create a defeasance escrow within 90 days of the deliberate action and redeem all of the nonqualified bonds on the first call date occurring after creation of the escrow. Disposition proceeds are amounts or property (such as an agreement to provide services) derived from the sale, exchange, or other disposition of property (other than investments) provided with proceeds.

Nonqualified bonds are the percentage of outstanding bonds that equal the highest percentage of any private business use in any one-year period commencing with the deliberate action. For example, assume that 22 percent of the proceeds of bonds were used to finance a facility and a deliberate action is taken with respect to the facility (e.g., the facility is sold to a private user) resulting in 100 percent private business use of the facility. In this case, 22 percent of the outstanding bonds as of the date of the deliberate action would be nonqualified bonds. *However, as noted above, if the facility is sold exclusively for cash, only a pro rata portion of the nonqualified bonds equal to the disposition proceeds must be redeemed or a defeasance escrow must be established with respect thereto.* For example, assume that the facility is sold for \$2,000,000 cash and the nonqualified bonds

allocated to the facility are \$2,500,000, only bonds equal to a principal amount plus redemption premium of \$2,000,000 must be redeemed or an escrow established (a portion of the \$2,000,000 may be used to pay redemption premium). Assume instead of selling the facility, it is leased to a private user. In this case, all of the nonqualified bonds (\$2,500,000) must be redeemed (or an escrow established). Allocations to nonqualified bonds must be made on a pro rata basis except that, in the case of remedial action relating to redemption or defeasance, an issuer may treat bonds with longer maturities as the nonqualified bonds.

If an escrow is created, written notice must be provided to the IRS of the establishment of the escrow within 90 days of the date that it is established. An escrow may not be created (and so defeasance is not a permitted remedial action) if the period between the issue date and the first call date for the bonds is more than 10.5 years. In all cases, the defeasance escrow must provide for redemption of the bonds on their earliest call date, must be sized taking into account investment earnings (no portion of the disposition proceeds can be used to pay interest on the bonds, investment earnings on the escrow could be used to pay such interest) and may not be invested in investments having a yield higher than bond yield or in any investment under which the obligor is a user of the bond proceeds.

Alternative Use of Disposition Proceeds

Instead of using the disposition proceeds to redeem bonds, the disposition proceeds may be spent on other governmental purposes if: (A) the disposition of the property was exclusively for cash, (B) the issuer reasonably expects to spend the disposition proceeds within two years of the date of deliberate action, (C) the disposition proceeds are treated as proceeds for purposes of the Private Business Tests and the private loan financing test and are not used so as to cause satisfaction of those tests (i.e., are used for governmental purposes) and the issuer does not take action after the date of deliberate action to cause the tests to be met, and (D) proceeds not used for such alternative purpose are used for redemption or creation of a defeasance escrow as referenced above. For example, assuming that a bond financed facility was sold to a private user for \$2,000,000 cash, the \$2,000,000 of disposition proceeds could be used to pay the costs of other governmental capital projects (such as a road) with an economic life at least as long as the average life of the bonds and subject to State law limitations on the use of the proceeds. Prior to use for such purposes, the disposition proceeds may be

invested pursuant to a qualifying temporary period (possibly a 3 year temporary period depending on the facts).

If disposition proceeds are to be used by a 501(c)(3) organization, the nonqualified bonds must be treated as reissued for purposes of the private activity bond tests, the qualified 501(c)(3) bond rules, the requirements pertaining to qualified 501(c)(3) bonds and to tax-exempt bonds, and the change of use provisions of the Code.

Alternative Use of Financed Facility

Instead of "following" the proceeds, the bond-financed property may be used for an alternate use qualifying for tax-exempt bonds under the Internal Revenue Code (e.g., used for a qualified 501(c)(3) purpose by a 501(c)(3) organization). This remedial action is satisfied if (A) the financed facility is used in an alternative manner that satisfies the rules relating to tax-exemption (but not necessarily the rules regarding governmental bonds), (B) the nonqualified bonds are treated as "reissued" on the date of deliberate action for purposes of Code section requirements pertaining to alternative minimum tax, private activity bond tests, qualifying private activity bond purposes, volume cap, requirements pertaining to qualified private activity bonds (except that the limitation of Code section 147(d), relating to acquisition of existing property does not apply), limitations pertaining to tax-exempt bonds generally and change of use, (C) such requirements are satisfied through the remaining term of the bonds, and (D) the disposition is not to a purchaser that finances the acquisition with proceeds of tax-exempt bonds. For example, a governmental bond-financed hospital sold to a 501(c)(3) corporation for use as a charitable hospital would be eligible for this exception.

Any disposition proceeds resulting from the deliberate action (including installment sale proceeds) must be used for debt service on the next payment date or, within 90 days, must be deposited in an escrow restricted to bond yield and used to pay debt service on the next available payment date.

Special Rules For Disposition Proceeds

Generally, after disposition, the proceeds of an issue are treated as financing the disposition proceeds (and their ultimate use) rather than the property that has been disposed of. If, however, a disposition is through an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issuer does not satisfy the conditions for remedial action or the issuer does not take an appropriate remedial action, the proceeds are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.

David A. Walton

Circular 230 Disclaimer. To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in the communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.

OAKLAND OVERSIGHT BOARD

RESOLUTION No. 2013-_____

A RESOLUTION APPROVING A BOND EXPENDITURE AGREEMENT BETWEEN THE OAKLAND REDEVELOPMENT SUCCESSOR AGENCY AND THE CITY OF OAKLAND TO TRANSFER EXCESS TAX ALLOCATION BOND PROCEEDS NOT PREVIOUSLY OBLIGATED TO THE CITY FOR BOND-ELIGIBLE PURPOSES

WHEREAS, the Oakland Redevelopment Successor Agency (“ORSA”) has succeeded to the authority, rights, powers, duties and obligations of the Redevelopment Agency of the City of Oakland under the Community Redevelopment Law; and

WHEREAS, ORSA received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on May 29, 2013; and

WHEREAS, Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to 2011 for any purposes for which the bonds were sold; and

WHEREAS, ORSA has and will have so-called “excess” bond proceeds, i.e., pre-2011 tax allocation bond proceeds that are not otherwise obligated for a project or income generated by projects and assets funded by pre-2011 tax allocation bonds that are restricted to bond-eligible uses; and

WHEREAS, ORSA wishes to use such proceeds for redevelopment purposes consistent with bond covenants; and

WHEREAS, the Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) provides for a cooperative relationship between redevelopment agencies, and their successor agencies, and cities; and

WHEREAS, Health and Safety Code Section 33220(e) authorizes a local public agency to enter into an agreement with a redevelopment agency, and its successor agency, to further redevelopment purposes; and

WHEREAS, Health and Safety Code Sections 34180(h) and 34178(a) authorize a successor agency to enter into new agreements with its sponsoring city with the approval of the oversight board; and

WHEREAS, ORSA desires to provide excess bond proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants, to undertake projects and programs eligible for redevelopment funding, which were not previously funded and obligated by ORSA or the City; and

WHEREAS, the City Council and the ORSA governing board have authorized entering into a Bond Expenditure Agreement to govern the transfer to and the use of such funding by the City for the costs of those projects and programs from current and future excess tax allocation bond proceeds; and

WHEREAS, the transfer of excess bond proceeds to the City under the Bond Expenditure Agreement will benefit the taxing entities by facilitating the efficient use of such funds to support projects and programs that will enhance property values and increase tax revenues to the taxing entities; and

WHEREAS, the transfer of excess bond proceeds to the City under the Bond Expenditure Agreement will help fulfill the intent of the dissolution laws to expeditiously wind-down the affairs of the former Redevelopment Agency; and

WHEREAS, Health and Safety Code Section 34177(I), as amended, requires a successor agency to prepare a Recognized Obligation Payment Schedule ("ROPS") listing the former agency's recognized enforceable obligations, payment sources, and related information for each six month fiscal period; and

WHEREAS, Health and Safety Code Section 34191.4(c)(2)(A) requires that excess bond obligations be listed separately on a successor agency's ROPS; and

WHEREAS, ORSA will list the Bond Expenditure Agreement on ROPS 13-14B as an obligation against excess tax allocation bond proceeds; now, therefore:

Based on the foregoing recitals and the documentation presented to the Oakland Oversight Board at a public meeting, the Oakland Oversight Board does resolve as follows:

SECTION 1. The Oakland Oversight Board hereby finds and determines that the transfer to, and use of excess bond proceeds by, the City for expenditures consistent with the applicable bond covenants will benefit the affected taxing entities by promoting the efficient use of such funds and thereby will result in community benefits and increased tax revenues to the taxing entities, based on the reasons and analysis set forth above and in the staff report accompanying this Resolution. The Oakland Oversight Board hereby further finds and determines the transfer of excess bond proceeds to the City will help fulfill the intent of the dissolution laws to expeditiously wind-down the affairs of the former Redevelopment Agency.

SECTION 2. The Oakland Oversight Board hereby approves ORSA's execution and performance under a Bond Expenditure Agreement between ORSA and the City of

Oakland that would (1) transfer current and future excess tax allocation bond proceeds to the City to fund redevelopment projects and programs not previously funded and obligated by ORSA or the City, and (2) require that such funds be used by the City consistent with the applicable bond covenants in furtherance of the purposes of redevelopment under the California Community Redevelopment Law. The Oakland Oversight Board finds that the Bond Expenditure Agreement and the obligations of ORSA thereunder will constitute the creation of excess bond proceeds obligations under Health and Safety Code Section 34191.4(c)(2)(A).

SECTION 3. The Oakland Oversight Board directs ORSA to include the Bond Expenditure Agreement and the transfer of excess tax allocation bond proceeds thereunder on ROPS 13-14B and on future ROPS as applicable. The effectiveness of the Bond Expenditure Agreement and transfers thereunder shall be contingent on the inclusion of the Bond Expenditure Agreement as an excess bond proceeds obligation on an approved ROPS.

ADOPTED, OAKLAND, CALIFORNIA, _____, 2013

PASSED BY THE FOLLOWING VOTE:

AYES- CARSON, GERHARD, LEVIN, ORTIZ, QUAN, YEE, TUCKER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
SECRETARY, OAKLAND
OVERSIGHT BOARD