



MEMORANDUM

Date: August 1, 2014
To: Mayor and Councilmembers
From: Derek P. Cole, City Attorney *William R. Cantata*
Subject: Report from Closed Session on July 8, 2014 regarding the City Manager's performance evaluation and *Department of Finance* litigation

FOR CONSIDERATION AT THE CITY COUNCIL MEETING OF AUGUST 12, 2014

There was no reportable action taken regarding the City Manager's performance evaluation.

On July 8, 2014, the City Council voted unanimously to authorize the Settlement Agreement with the Department of Finance and County Auditor-Controller in *City of Oakley v. Matosantos*, Sacramento Superior Court Case No. 34-2013-80001435. The parties executed the agreement on July 15, 16, and 18, respectively. A copy of the agreement is attached to this Memorandum.

A brief summary of the Settlement Agreement is as follows:

1. The City—with City funds—agrees to transfer \$1,450,500 to the Successor Agency. This amount corresponds with: (a) the value of the Development and Disposition Agreement ("DDA"), \$1,575,000, that was entered into in August 2011 for the Agency's interest in the Carpaccio Restaurant property and adjacent retail space (now occupied by the Republic of Cake), (b) less \$124,500, the amount of approved administrative allowance and bond administration expenses that has been withheld because the City has not yet obtained a finding of completion, as the Dissolution Act requires.¹

¹ DOF ordered that this amount be withheld in December 2013, after the parties had begun the negotiations that led to the Settlement Agreement. Essentially, the value ordered to be withheld is being restored to the City in the form of a credit against the amount the City must transfer for all title and interest in the Carpaccio DDA.

Subject: Report from Closed Session Regarding CM Performance Evaluation and *Department of Finance* Litigation

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2. Upon this transfer of funds, the City will acquire all right, title, and interest in the DDA and, therefore, will have full ownership of the Agency's unencumbered Carpaccio and Republic of Cake assets. Effectively, the City is "buying back" the DDA and restoring to the Successor Agency the former Redevelopment Agency money that was used to create the DDA assets.
3. After the transfer of funds from the City to Successor Agency, the Successor Agency will remit to the Auditor-Controller \$1,418,284. This sum is the total of the amounts that were determined to remain in the Low and Moderate-Income Housing Fund (\$466,020) and Other Funds Available account (\$952,264) by due-diligence reviews ("DDR's") that the Dissolution Act required. The Act requires that the Auditor-Controller, in turn, distribute these funds to the various agencies that are called "taxing entities," a full list of which is provided in footnote 1 of the Settlement Agreement.
4. Once the Successor Agency remits the DDR payments to the Auditor-Controller, DOF will issue the City a finding of completion and retroactively recognize several of the obligations at issue in ROPS III—mostly dealing with the Main Street and Public Plaza Projects—as enforceable obligations.
5. In exchange for the above, the City has agreed that it will not further seek to have two ROPS III items declared as enforceable obligations of the Successor Agency: (a) Item No. 8, a loan between the City and former RDA for deferred impact fees associated with the Cypress Associates/Courtyards at Cypress Grove Project, and (b) Item No. 25, which sought payment from the Successor Agency for City administration of certain housing programs.

In response to the full execution of the Settlement Agreement, the *Department of Finance* litigation was formally dismissed on July 23, 2014.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims, effective July 8, 2014 (this "Agreement"), is entered into among: (i) the City of Oakley ("City"), for itself and in its capacity as Successor Agency to the Oakley Redevelopment Agency, (ii) Michael Cohen, in his official capacity as Director of Finance for the State of California and the California State Department of Finance (collectively, the "Department"), and (iii) Robert R. Campbell, in his official capacity as Auditor-Controller of the County of Contra Costa (the "Auditor-Controller"). Collectively, the City, Department, and Auditor-Controller are "Parties" to this Agreement and each is, individually, a "Party" to this Agreement.

RECITALS

A. On August 22, 2012, the Successor Agency to City of Oakley Redevelopment Agency ("Successor Agency") submitted its Recognized Obligation Payment Schedule III ("ROPS III") to the Department for review. (A copy of ROPS III is attached hereto as Exhibit A and incorporated by reference.) Following an initial determination and subsequent meet-and-confer between the Successor Agency and the Department, the Department made its final determinations regarding ROPS III and advised the City of the same in a December 18, 2012 letter (a copy of which is attached hereto as Exhibit B and incorporated by reference.)

B. On February 8, 2013, the City commenced *City of Oakley v. Matosantos et al.*, Sacramento Superior Court Case No. 34-2013-80001435 (the "Legal Action"). In this action, the City named the Department and the Auditor-Controller as Defendants. In addition, the City named several real parties in interest, as set forth in the footnote below, who are referred to within as "Taxing Entities."¹

C. In the Legal Action, the City challenges several determinations the Department made regarding the City's submission of ROPS III pursuant to Health & Safety Code, Division 24, Parts 1.8 and 1.85 (collectively, the "Dissolution Act"). The Department filed an Answer to the City's complaint on April 8, 2013. The Auditor-Controller filed its Answer on May 3, 2013.

¹ These include the County of Contra Costa, Contra Costa County Flood Control & Water Conservation District, Contra Costa County Flood Control Zone 1, Contra Costa Water District, East Contra Costa Fire Protection District, Contra Costa Resource Conservation District, Contra Costa Mosquito & Vector Control District, Ironhouse Sanitary District, Bay Area Rapid Transit, Bay Area Air Quality Management District, East Bay Regional Park District, East Contra Costa Irrigation District, Liberty Union High School District, Brentwood Union School District, Byron Union School District, Knightsen Elementary School District, Oakley Union Elementary School District, Contra Costa County Office of Education, K-12 Educational Revenue Augmentation Fund, Antioch Unified School District, Contra Costa Community College District, and Community College Educational Revenue Augmentation Fund.

D. The specific ROPS III items at issue in the Legal Action include the following items:

<u>Item</u>	<u>Description of Item</u>	<u>Total Obligation Amount Claimed</u>	<u>Involves Bond Proceeds?</u>
8	Payment of Interagency Obligations	\$1,353,000	No
14	Oakley Plaza Façade Improvement Project	\$ 15,433	Yes
15	Loan pursuant to Development & Disposition Agreement (Manuel's 5-Star Restaurants)	\$1,200,000	No
16	Loan pursuant to Development & Disposition Agreement (Manuel's 5-Star Restaurants)	\$600,000	Yes
17	Construction of Additional Retail Space (Manuel's 5-Star Rest.)	\$375,000	No
18	CentroMart Façade and Building improvements	\$500,000	Yes
19	Oakley Plaza Public Parking Improvements	\$1,560,000	Yes
20	Construction of Public Plaza	\$700,000	Yes
21	Construction of Main Street Improvements	\$3,798,000	Yes
22	Staff costs associated with loan advances and completing projects obligated by DDA's	\$466,653	Yes
23	Costs for fabrication and installation of directional monument signs	\$51,885	Yes
24	Main Street frontage improvements	\$800,000	Yes
25	Joint Projects and Cooperation Agreement payment for housing activities/programs	\$2,880,000	No
27	Engineering and Design Services for Oakley Plaza Public Parking Improvements	\$1,453	Yes
28	Completion of Design Work for Downtown Main Street Project	\$76,081	Yes

E. On July 12, 2012, the Successor Agency remitted to the Auditor-Controller the sum of \$190,415.61, as required by Health & Safety Code section 34183.5.

F. In accordance with the Dissolution Act, due-diligence reviews (“DDRs”) were conducted of the Successor Agency’s Low and Moderate Income Housing Fund (“LMIHF”) and Other Funds and Accounts (“OFA”). The Department determined that the Successor Agency owed \$537,576 from the LMIHF and \$952,264 from the OFA.

G. As of December 17, 2013, the Department determined the Successor Agency had not remitted \$466,020 in LMIHF funds and \$952,264 to the Auditor-Controller as required by the Dissolution Act. The Department accordingly directed the Auditor-Controller in writing on that date to withhold \$124,500 from the Real Property Tax Trust Fund (“RPTTF”) allocation for the Successor Agency for the ROPS 13-14B period. The Department issued this order pursuant to Health and Safety Code section 34179.6(h)(2).

H. Without making any admissions, the Parties through this Agreement seek to resolve their outstanding disputes in a manner that allows them to forego the expenses, burdens, and time commitment of further trial, post-trial proceedings, and appeals in the Legal Action.

AGREEMENT

1. The Parties incorporate the above-stated Recitals as material terms of this Agreement.

2. By no later than its first regularly scheduled meeting in August, the City Council of the City shall consider the Resolution attached to this Agreement as Exhibit C (“Transfer Resolution”) and incorporated by reference. Should the City Council approve the Transfer Resolution substantially in the form as shown in Exhibit C, it shall thereafter, and within five business days of such approval, cause the transfer of funds to be made from the City to the Successor Agency in the amount of \$1,450,500 (one million, four hundred fifty thousand, five hundred dollars). This amount represents the value of the original DDA concerning design and construction loan related to the restaurant space, \$1.2 million (Item No. 15) plus the value of the DDA amendment concerning construction of the adjacent retail building, \$375,000 (Item No. 17), less the \$124,500 that was denied by the Department for administrative allowance and bond administration. If the City Council does not approve the Transfer Resolution substantially in the form shown as Exhibit C, this agreement shall become void, and the Parties shall be restored to the *status quo ante* as of the date first set forth above (the “Effective Date”) of this Agreement, and shall resume litigation of the Legal Action.

3. Within five business days of the transfer of funds set forth in Paragraph 2, and from the funds deposited pursuant to that paragraph, the Successor Agency shall remit the amount of \$1,418,284 (One Million Four Hundred Eighteen Thousand, Two Hundred Eighty-Four Dollars) to the Auditor-Controller. This amount corresponds with: (a) \$466,020 as the remainder of the LMIHF DDR obligation to be distributed to the Taxing Entities; and (b) \$952,264 for the OFA DDR obligation to be distributed to the Taxing Entities.

4. Following the Auditor-Controller's receipt of the full amounts of both sums required by Paragraph 3, and because the Successor Agency previously made payment to the Auditor-Controller on July 12, 2012 in the amount of \$190,415.61, as required by Health & Safety Code section 34183.5, (a) the Department shall issue a finding of completion pursuant to Health and Safety Code section 34179.7 and (b) Disputed Items from ROPS III (as more fully defined above in Recital D) Nos. 14, 16, 18, 19, 20, 21, 22, 23, 24, 27, and 28 (redevelopment projects financed solely with 2008-series bonds) will be deemed enforceable obligations pursuant to this Agreement and, when applicable, Health and Safety Code section 34191.4.

5. The Successor Agency agrees it will not resubmit ROPS III Items No. 8, 15, 17 and 25 to the Successor Agency Oversight Board, and by this Agreement withdraws all right to assert that these items are enforceable obligation pursuant to the Dissolution Act.

6. The Parties recognize that following the transfer of funds from the City to Successor Agency as provided in Paragraph 2, all right, title, interest, and enforcement remedies to and in ROPS III Item Nos. 15 and 17 (respectively, a restaurant and adjoining retail space, as shown in Recital D above) shall become exclusively vested in the City, and the Successor Agency shall have no claim to the value of the assets or to the assets themselves. The Department shall not challenge the City's right, title, and interest in these items.

7. This Agreement is not intended to compel any Party to exercise its discretion in any particular way and shall not be interpreted in a way that contradicts or that authorizes the waiver of any obligation to enforce any provision or requirement of the Dissolution Act or any other applicable law.

8. Within five business days of the issuance of the finding of completion, the Successor Agency and City shall file a request for dismissal of the Legal Action, with prejudice (the "Dismissal"), and serve the same on all parties. Prior to the filing of the Dismissal, so long as the City and Successor Agency are expeditiously and in good faith meeting their obligations under this Agreement, the Department shall not undertake any enforcement actions against the City and/or Successor Agency as to this Agreement.

9. Upon the entry of the Dismissal of the Legal Action as provided in Paragraph 8, each Party and his/her/its heirs, executors, administrators, predecessors, successors in interest, affiliates, partners, assigns, agents, officers and directors hereby forever generally, completely and mutually release and discharge the other, including, but not limited to, his/her/its heirs, executors, administrators, trustees, settlors, beneficiaries, issue, directors, officers, shareholders, agents, predecessors, assigns, employees and attorneys, from any and all claims, demands, debts, duties, obligations, promises, liabilities, damages, accounts, payments, liens, acts, costs, expenses, sums of money, suits, dues, actions and/or causes of action of every kind and nature in law, equity, or otherwise, known and unknown, matured and unmatured, suspected and unsuspected, disclosed and undisclosed, and in particular from all claims and demands of every kind and nature, known and unknown, matured and unmatured, suspected and unsuspected, disclosed and undisclosed, for damages actual and consequential, past, present, and after,

arising out of or in any way related to their respective obligations, activities and/or dealings with one another arising out of or in any way related to or based upon the facts, circumstances or disputes claimed in, or related to, the subject matter of the Legal Action.

10. The Parties acknowledge they have read this Agreement, have had the opportunity to have the Agreement explained to them by counsel of their choice, are aware of its content and legal effect, and are signing this Agreement freely and voluntarily.

11. Each of the undersigned represents that he/she has the authority to bind the Party on whose behalf that he/she has executed this Agreement. The Agreement may be executed in counterparts and in duplicate originals. If so executed, then upon proof of execution of at least one copy, the Agreement shall be effective as of the Effective Date. If executed in duplicate, each duplicate copy shall be valid as an original copy.

12. The Parties each warrant that he/she/it has not assigned or transferred, attempted to assign or transfer, and will not assign or transfer, any claim which was raised, or could have been raised, in connection with the Legal Action.

13. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any Party.

14. This Agreement constitutes the entire agreement between the Parties. No modification of this Agreement shall be valid unless in writing and signed by the Parties. The Parties shall not be bound by any representation, warranty, promise, or statement unless it is specifically set forth in this Agreement.

15. This Agreement is made and is enforceable in accordance with the provisions of Code of Civil Procedure Section 664.6 and the Parties agree that the Court shall retain jurisdiction for that purpose after dismissal of the Legal Action. This Agreement is admissible in any proceeding for its enforcement or interpretation.

16. This Agreement shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of California. Should any term of this Agreement be deemed unlawful, that provision shall be severed, or construed in accordance with applicable law as nearly as possible to reflect the Parties mutual original intent, and all remaining terms shall continue to be valid and fully enforceable. Furthermore, the place of performance shall be the County of Sacramento, State of California, in the event of litigation.

17. This Agreement is binding on the heirs, personal representatives, successors, and assigns of the Parties, and inure to the benefit of each Party, its successors and assigns.

18. The Parties agree to execute and deliver any other instrument or document convenient or necessary to carry out the terms of this Agreement.


19. The Parties agree that this Agreement may not be introduced as evidence in connection with any claim, legal proceeding, hearing or lawsuit, except in a proceeding to enforce this Agreement.

20. Failure of any of the Parties to insist upon the strict observance of, or compliance with, all of the terms of this Agreement in one or more instances, shall not be deemed to be a waiver of any of the Parties' right to insist upon such observance or compliance with the other terms of this Agreement.

21. This Agreement is intended to be for the benefit of the Parties, and by this instrument, the Parties do not release any claims against any other person or entity.

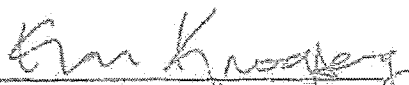
22. Each party shall bear its own attorney fees and costs in association with the Legal Action.

CITY OF OAKLEY and SUCCESSOR AGENCY TO THE OAKLEY
REDEVELOPMENT AGENCY


By: Bandy Pope, Mayor

18 JUL 14
Dated

CALIFORNIA DEPARTMENT OF FINANCE


By: Kari Krogseng, Chief Counsel
Asst.

July 15, 2014
Dated

AUDITOR -CONTROLLER
COUNTY OF CONTRA COSTA


By: Robert R. Campbell
Auditor-Controller

July 16, 2014
Dated

APPROVED AS TO FORM

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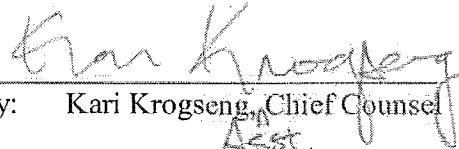
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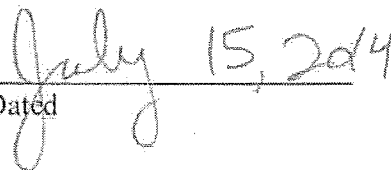
By: Randy Pope, Mayor

Dated

CALIFORNIA DEPARTMENT OF FINANCE

By:  Kari Krogseng, Chief Counsel
Asst.

Dated



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COUNTY OF CONTRA COSTA

By: Robert R. Campbell
Auditor-Controller

Dated

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REDEVELOPMENT AGENCY

By: Randy Pope, Mayor

Dated

CALIFORNIA DEPARTMENT OF FINANCE

By: Kari Krogseng, Chief Counsel
Asst.

Dated

AUDITOR -CONTROLLER
COUNTY OF CONTRA COSTA

By: Robert R. Campbell
Auditor-Controller

Dated

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By: Randy Pope, Mayor

Dated _____

CALIFORNIA DEPARTMENT OF FINANCE

By: *Kari Krogseng*
Kari Krogseng, Chief Counsel
Asst.

Dated July 15, 2014

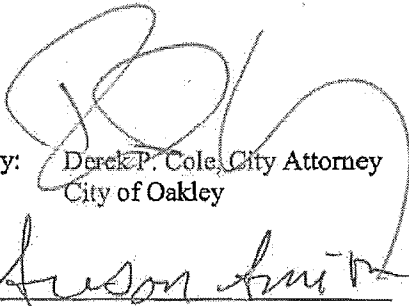
AUDITOR -CONTROLLER
COUNTY OF CONTRA COSTA

By: *Robert R. Campbell*
Robert R. Campbell
Auditor-Controller


Dated July 16, 2014

APPROVED AS TO FORM

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DC

By: 
Derek P. Cole, City Attorney
City of Oakley

7-16-14
Dated

By: 
Susan K. Smith
Attorneys for Defendants Michael
Cohen and California Department of Finance

July 16, 2017
Dated


Sharon L. Anderson, County Counsel

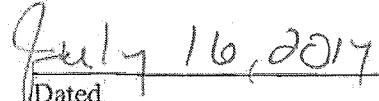
By: _____
Eric Gelston, Deputy County Counsel
County of Contra Costa

Dated

By: Derek P. Cole, City Attorney
City of Oakley

Dated


By: Susan K. Smith
Attorneys for Defendants Michael
Cohen and California Department of Finance


Dated

Sharon L. Anderson, County Counsel

By: _____
Eric Gelston, Deputy County Counsel
County of Contra Costa

_____ Dated


By: Derek P. Cole, City Attorney
City of Oakley

Dated

By: Susan K. Smith
Attorneys for Defendants Michael
Cohen and California Department of Finance

Dated

Sharon L. Anderson, County Counsel

By: 
Eric Gelston, Deputy County Counsel
County of Contra Costa

7/16/14
Dated

EXHIBIT A

RECOGNIZED OBLIGATION PAYMENT SCHEDULE (ROPS III)
 January 1, 2013 through June 30, 2013

Item #	Project Name / Debt Obligation	Contract/Agreement Execution Date	Contract/Agreement Termination Date	Payee	Description/Project Scope	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2012-13	Funding Source						
									LMHF	Bond Proceeds	Reserve Balance	Admin Allowance	RPTTF	Other	Six-Month Total
Grand Total									\$ 73,567,327	\$ 40,000	\$ 1,497,318	\$ -	\$ 1,371,509	\$ 209,000	\$ 3,708,626
1	2003 TARE DS	At Bond Issuance 2003	8/1/2033	Wells Fargo Corporate Trust	Debt Service Payable in September and March through 2033	Oakley	3,405,256	824,000					1,371,509		3,708,626
2	2008 Tax Exempt TARE DS	At Bond Issuance 2008	8/1/2038	Wells Fargo Corporate Trust	Debt Service Payable in September and March through 2038	Oakley	48,879,268	1,504,400					209,000		209,000
3	Annual Trustee/Fiscal Agent Fees	At Bond Issuance 2003	8/1/2033	Wells Fargo Corporate Trust	Annual Trustee Fee for 2003 Bonds	Oakley	45,000	7,200							594,130
4	Annual Trustee/Fiscal Agent Fees	At Bond Issuance 2008	8/1/2038	Wells Fargo Corporate Trust	Annual Trustee Fee for 2008 Bonds	Oakley	55,000	2,000							-
5	Continuing Disclosure Services	At Bond Issuance 2003	8/1/2033	NBS Financial	Annual Continuing Disclosure Services for 2003 Bonds	Oakley	42,000	2,000					500		500
6	Continuing Disclosure Services	At Bond Issuance 2008	8/1/2038	NBS Financial	Annual Continuing Disclosure Services for 2008 Bonds	Oakley	52,000	2,000					500		500
7	Data for Continuing Disclosures	2003 & 2008	8/1/2038	Wells Fargo Corporate Trust	Data for Continuing Disclosures (used for both the 2003 and 2008 Bonds)	Oakley	28,000	1,000					1,000		1,000
8	DS Payment on Intraagency Obligation	Dec 2005 and Jan 2011	2016 or when paid	City of Oakley	Payment of Impact Fees on Parking Project	Oakley	1,353,000	265,000						265,000	265,000
9	Annual External Audit	From Bond Issuances 2003 and 2008	8/1/2038 or when Successor Agency is dissolved	Current External Auditor is Wozniak and Associates	Required external audit of the SA pursuant to bond documents	Oakley	186,000	7,500					4,500		4,500
10	Debt Service Reserve Fund				Set aside for debt service due in September	Oakley	300,000	300,000					300,000		300,000
11	SA Administrative Allowance			City of Oakley	Administrative allowance, as prescribed	Oakley	\$250k/yr until Agency's obligations are paid off in full and Agency is dissolved	250,000						250,000	250,000
12	Main Street Realignment - Downtown Parking	Contra Litigation		City of Oakley	The remains subject to the outcome of ongoing litigation related to valuation of property acquired for a project in the downtown. Based on the original appraisal of the property, the Agency already has made a deposit (\$487,000) with the State Treasurer's Condemnation Fund to compensate the property owner. Negotiations to settle failed and in light of the RDA's dissolution, the City has withdrawn the case, opting instead to defer completion of the planned roadway connector and provide public parking on the Oakley Plaza site, where parking lot improvements are already an obligation. The City will still be liable for certain legal and other costs for the case, but any remainder will be returned by the State for use on the Oakley Plaza project	Oakley	To be determined by the Court	To be determined by the Court							
13	Property Common Area Maintenance and Property Taxes	Various Tenant Leases, most entered into in February-April 2011	Indefinitely, since portions of the common area will become public property	Various contractors and others	Property taxes, maintenance and common area charges for operate owned properties pursuant to existing leases and obligation to maintain properties	Oakley		60,000						30,000	30,000
14	Oakley Plaza Façade Improvement Project	August 22, 2011 to meet obligations pursuant to Request 9, 2011 ODA	At project completion	Sterling Architects	Oakley Plaza Façade improvement Project Design	Oakley	15,433	15,433	15,433						15,433
15	Downtown Project	8/9/2011	2043	Manuel's Five Star Restaurants	Loan pursuant to DDA for Downtown Restaurant project	Oakley	1,200,000	1,200,000							
16	Downtown Project	8/9/2011	2043	Manuel's Five Star Restaurants	Loan pursuant to DDA for Downtown Restaurant project	Oakley	124,000	600,000							
17	Downtown Project	8/9/2011	At project completion	Manuel's Five Star Restaurants/Ascend Builders	Construction of additional retail space attached to planned restaurant promised as part of DDAs for Downtown Restaurant projects	Oakley	160,704	375,000							
18	Downtown Project	8/9/2011	At project completion	TBD	Centro-Mart Façade and Building improvements represented as part of DDAs	Oakley	500,000	500,000	500,000						500,000
19	Downtown Project	8/9/2011	At project completion	Bay Cities	Oakley Plaza Public Parking improvements represented as part of DDAs	Oakley	1,580,000	1,580,000							
20	Downtown Project	8/9/2011	At project completion	TBD	Construction of Public Plaza represented as part of DDAs	Oakley	700,000	700,000							
21	Downtown Project	8/9/2011	At project completion	Bay Cities	Construction of Main Street Improvements represented as part of DDAs	Oakley	\$ 799,000	\$ 799,000							
22	Downtown Project	8/9/2011	At project completion	City of Oakley	Staff costs associated with loan advances and completing projects obligated by DDAs with Manuel's Five Star Restaurants and Dinerette Corporation	Oakley	466,653	466,653		130,000					130,000
23	Directional Sign Project	8/9/2011	At project completion	ETS and EKS Sign Systems	Costs for fabrication and installation of directional monuments/signs	Oakley	51,885	51,885	51,885						51,885
24	Main Street Frontage Improvements	February 2009	At project completion	TBD	Main Street frontage improvements to Conco Land Company property on Main Street (APNs 037-100-048 and 037-100-049) pursuant to dedication agreement	Oakley	800,000	800,000	800,000						800,000
25	Housing Activities/Programs	1/19/2011	Unspecified	City of Oakley	Joint Projects and Cooperation Agreement payment for housing activities/programs	Oakley	2,880,000	120,000	60,000						60,000

EXHIBIT B



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

December 18, 2012

Mr. Paul Abelson, Finance Director
City of Oakley
3231 Main Street
Oakley, CA 94561

Dear Mr. Abelson:

Subject: Recognized Obligation Payment Schedule

This letter supersedes Finance's Recognized Obligation Payment Schedule (ROPS) letter dated October 6, 2012. Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Oakley Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS III) to the California Department of Finance (Finance) on August 22, 2012 for the period of January 1 through June 30, 2013. Finance issued its determination related to those enforceable obligations on October 6, 2012. Subsequently, the Agency requested a Meet and Confer session on one or more of the items denied by Finance. The Meet and Confer session was held on November 19, 2012.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of the specific items being disputed.

- Item No. 8 – DS Payment on Interagency Obligations in the amount of \$1.4 million. Finance continues to deny the item at this time. Finance denied the item because this is a Cooperation and Repayment Agreement between the City of Oakley (City) and the former redevelopment agency (RDA) entered into on January 19, 2011. The Agency contends the original obligation was entered into in 2005. However, HSC section 34171 (b) states that agreements, contracts, or arrangements between the city that created the RDA and the former RDA are not enforceable. The RDA was established in 1999 and the agreement was entered into in 2005. Per HSC section 34191.4 (b), upon obtaining a Finding of Completion from Finance, agreements entered into between the RDA and the city, county, or city and county that created the RDA shall be deemed to be enforceable obligations provided the oversight board makes a finding the loan was for legitimate redevelopment purposes. Therefore, this item is currently not an enforceable obligation and not eligible for Redevelopment Property Tax Trust Fund (RPTTF) funding at this time.
- Items Nos. 14, 15 through 22, 23, 27, and 28 – Various bond funded projects as listed below:
 - Item 14 – Oakley Plaza Façade Improvement Project in the amount of \$15,433 bond funds.

- Items 15 through 22, 27 and 28 – Downtown Project totaling \$8.59 million in bond funds.
- Item 23 – Directional Sign Project in the amount of \$51,885 bond funds.

Finance denied the items as HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. Finance continues to deny the items at this time based on HSC 34163 (b). Additionally, we note the contract and related documents were entered into by the City, not the former RDA. Therefore, the Agency is not contractually obligated for payment. The Agency also provided resolution SA 06-12 of the City Council acting as the Successor Agency dated April 24, 2012, authorizing the City Manager to execute amendments to the Disposition Agreement for the Downtown Project. However, HSC section 34163 (c) prohibits amending or modifying existing agreements. Therefore, these items are currently not enforceable obligations. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.

- Item No. 24 – Main Street Frontage Improvement in the amount of \$800,000 in bond funds. Finance continues to deny the item at this time. Finance denied the item as no construction contract was in place as of the date of the ROPS III review. HSC section 34163 (b) prohibits a RDA from entering into a contract with any entity after June 27, 2011. The Agency contends the item is an enforceable obligation because a dedication agreement was entered into on February 24, 2009, in exchange for frontage improvements and the date of the construction contract is in continuance of that agreement. However, the contract is between the City and a third party, the former RDA is not a party to the contract and not contractually obligated under the agreement. Therefore, the item is currently not an enforceable obligation. However, successor agencies will be eligible to expend bonds issued prior to January 1, 2011, once a finding of completion is received per 34191.4 (c). Those obligations should be reported on a subsequent ROPS.
- Item No. 25 – Housing Activities/Programs in the amount of \$2.9 million Low and Moderate Income Housing funds. Finance continues to deny this item. Finance denied the item as the requirement to set aside 20 percent of tax increment funding for low and moderate-income housing programs ended with the passage of the redevelopment dissolution legislation. Obligations associated with the former RDA's previous statutory housing obligations are not enforceable obligations. Upon the transfer of the former RDA's housing functions to the new housing entity, HSC section 34176 requires that "all rights, powers, duties, obligations and housing assets...shall be transferred" to the new housing entity. This transfer of "duties and obligations" necessarily includes the transfer of statutory obligations; to the extent any continue to be applicable. To conclude that such costs should be on-going enforceable obligations of the successor agency is directly contrary to the wind down directive in ABx1-26/AB1484. Therefore, this item is not an enforceable obligation.

In addition, per Finance's ROPS letter dated October 6, 2012, the following item continues to be reclassified and was not contested by the Agency:

- Item No. 9 – Annual External Audit in the amount of \$4,500 was reclassified as an administrative cost. Although this reclassification increased administrative costs to \$4,500, the administrative cost allowance has not been exceeded.

Mr. Paul Abelson
December 18, 2012
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The Agency's maximum approved RPTTF distribution for the reporting period is \$1,106,308 as summarized below:

Approved RPTTF Distribution Amount	
For the period of January through June 2013	
Total RPTTF funding requested for obligations	\$ 1,371,308
Less: Six-month total for item(s) denied or reclassified as administrative cost	
Item 8	265,000
Item 9*	4,500
Total approved RPTTF for enforceable obligations	\$ 1,101,808
Plus: Allowable RPTTF distribution for administrative cost for ROPS III	4,500
Total RPTTF approved:	\$ 1,106,308

*Reclassified as administrative cost.

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

The amount available from the RPTTF is the same as the property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

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

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

Sincerely,


STEVE SZALAY
Local Government Consultant

cc: Mr. Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office

EXHIBIT C

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLEY
AUTHORIZING THE PAYMENT OF \$1,450,500 IN CITY FUNDS TO THE
SUCCESSOR AGENCY OF THE CITY OF OAKLEY, AND ACCEPTANCE OF
THE SAME BY THE SUCCESSOR AGENCY, IN EXCHANGE FOR ALL
RIGHTS, TITLE, AND INTERESTS TO AND IN THE DESIGN AND
CONSTRUCTION LOAN ASSOCIATED WITH THE CARPACCIO'S
RESTAURANT AND FOR ALL RIGHTS, TITLE, AND INTERESTS IN THE
ADJACENT RETAIL BUILDING AT 3080 MAIN STREET**

WHEREAS, on October 19, 2010, the Redevelopment Agency of the City of Oakley ("RDA") acquired the fee interest in 3070 Main Street (the Listek Property, APN 037-200-006) as part of an effort to redevelop the City's downtown area;

WHEREAS, on January 19, 2011, the City of Oakley and RDA entered into a Cooperation Agreement by which the RDA transferred all assets to the City and the City agreed to administer and perform on behalf of the RDA all programs and activities authorized by the Community Redevelopment Law (Health & Safety Code section 33000 et seq.);

WHEREAS, on February 23, 2011, the RDA transferred title to 3070 Main Street to the City pursuant to the Cooperation Agreement;

WHEREAS, on March, 25, 2011, the City, pursuant to the Cooperation Agreement, acquired the fee interest in 3080 Main Street (a portion of the Centromart Property, APN 037-200-008) through a Final Order in Condemnation;

WHEREAS, following the enactment of AB 1x 26 in June 2011, which required the dissolution of redevelopment agencies, the City Council on August 9, 2011 enacted an urgency ordinance pursuant to companion legislation, AB 1x 27, electing to participate in the Voluntary Alternative Redevelopment Program;

WHEREAS, on August 9, 2011, pursuant to the Cooperation Agreement, the City of Oakley ("City") entered into a Development and Disposition Agreement ("DDA") with Manuel's Five Star, Restaurant, Inc. ("Manuel's") authorizing the City to provide Manuel's a loan in the amount of \$1.2 million for the design and construction of a restaurant ("Carpaccio's Restaurant") at that location;

WHEREAS, on August 9, 2011, pursuant to the DDA, the City of Oakley, entered into a Lease Agreement with Manuel's for the design and construction of Carpaccio's Restaurant.

WHEREAS, on April 24, 2012, the City entered into an amendment of the DDA in the amount of up to \$375,000 with Manuel's for construction of an additional retail space immediately next to the Carpaccio's Restaurant, located at the 3080 Main Street property;

WHEREAS, at the time the City executed the above-mentioned agreements related to the development of the Restaurant and the DDA amendment concerning adjacent retail space, the City did so under the apparent authority of the Cooperation Agreement and election to participate in the Voluntary Alternative Redevelopment Program;

WHEREAS, on December 29, 2011, the State Supreme Court upheld AB 1x 26 and the dissolution of redevelopment agencies, but invalidated AB 1x 27 as unconstitutional, in *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231;

WHEREAS, on January 10, 2012, the City Council Adopted Resolution No. ___-12, authorizing the City to become the Successor Agency to the RDA.

WHEREAS, on June 27, 2012, the Legislature enacted AB 1484, which among other things, declared that actions taken by redevelopment agencies after the effective date of AB 1x 26 (i.e., June 28, 2011) were void *ab initio*, and that certain agreements between redevelopment agencies and their sponsoring agencies were invalid and unenforceable;

WHEREAS, On August 20, 2012, the Oversight Board to the Successor Agency to the Redevelopment Agency of the City of Oakley ("Oversight Board") adopted Resolution No. 09-12, approving and adopting a ROPS for the period of January 1 through June 30, 2013, known as "ROPS III."

WHEREAS, ROPS III identified the DDA and Lease Agreement related to the Carpaccio's Restaurant and DDA amendment concerning the adjacent retail space as enforceable obligations pursuant to the Dissolution Act (i.e., AB 1x 26, as amended by AB 1484);

WHEREAS, the Department of Finance ("Department") denied recognition of these items (specifically, ROPS III items 15 and 17) as enforceable obligations on October 6, 2012, and affirmed these denials on December 18, 2012, following a meet-and-confer conference with the City;

WHEREAS, the City commenced a civil action in Sacramento Superior Court on February 8, 2013 challenging the Department's resolution of all disputed ROPS III items ("Legal Action," *City of Oakley et al. v Matosantos et al.*, Case No. 34-2013-80001435-CU-WM-GDS), including Items 15 and 17, pertaining to the agreements for Carpaccio's Restaurant and the adjacent retail space;

WHEREAS, in accordance with the Dissolution Act, due-diligence reviews ("DDRs") were conducted of the Successor Agency's Low and Moderate Income Housing Fund ("LMIHF") and Other Funds and Accounts ("OFA"). The Department determined that the Successor Agency owed \$537,576 from the LMIHF and \$952,264 from the OFA;

WHEREAS, as of December 17, 2013, the Department determined the City had not remitted \$466,020 in LMIHF funds and \$952,264 to the Contra Costa County Auditor-Controller ("Auditor-Controller") as required by the Dissolution Act. The Department accordingly directed the Auditor-Controller in writing on that date to withhold \$124,500 from the Real Property Tax Trust Fund ("RPTTF") allocation for the Successor Agency for the ROPS 13-14B period. The Department issued this order pursuant to Health and Safety Code section 34179.6(h)(2);

WHEREAS, the \$124,500 withheld from the RPTTF for ROPS 13-14B resulted in the City not receiving funds sufficient to pay the City an Administrative Allowance in the amount of \$120,000 or \$4,500 for bond-administration, notwithstanding that such expenditures were approved during the same ROPS period;

WHEREAS, as part of a settlement of the Legal Action, the City is willing to forego asserting the position that ROPS III Items 15 and 17 are enforceable obligations, and to restore to the Successor Agency all funds expended in association with those transactions, specifically in the amount of \$1,575,000 (i.e., the value of the original DDA concerning design and construction loan related to the restaurant space, \$1.2 million, plus the value of the DDA amendment concerning construction of the adjacent retail building, \$375,000) less the \$124,500 that was effectively restored to the Successor Agency because of the RPTTF withholding for ROPS Period 13-14B.

WHEREAS, in exchange for the restoration of \$1,450,500 to the Successor Agency in association with ROPS III Items 15 and 17 (i.e., \$1,575,000 minus \$124,500), the City will receive all of the Successor Agency's rights, title, and interests to and in the assets related to the those items.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oakley authorizes the appropriation and payment from General Fund balances in the amount of \$1,450,500 to the Successor Agency in exchange for all of the Successor Agency's rights, title, and interests in the assets related to the Carpaccio's Restaurant and adjoining retail space.

BE IT FURTHER RESOLVED by the City Council, in its capacity as governing body for the Successor Agency, that the Successor Agency is authorized to accept, and shall accept, the payment of the \$1,450,500 for the purposes set forth above.

BE IT FURTHER RESOLVED by the City Council, in its capacity as governing body for the Successor Agency, that the Successor Agency shall utilize the transferred funds to forthwith remit to the Auditor-Controller the amounts necessary to pay the outstanding LMIHF and OFA DDR obligations for distribution to affected taxing entities.

BE IT FURTHER RESOLVED that the City Council of the City of Oakley finds that the payment of funds authorized within is purely a fiscal activity and not a "project," as defined under California Environmental Quality Act Guideline section 15378(b)(4).

The foregoing resolution was adopted at a regular meeting of the City Council of the City of Oakley held on the _____ day of _____, 2014, by Councilmember _____, who moved its adoption, which motion being duly seconded by Councilmember _____, was upon voice vote carried and the resolution adopted by the following vote:

AYES:

NOES:

ABSTENTION:

ABSENT:

APPROVED:

Randy Pope, MAYOR

ATTEST:

Libby Vreonis, CITY CLERK

Date