REDEVELOPMENT AGENCY OF THE CITY OF SANTA CLARA

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012

JOHN CHIANG
California State Controller

September 2013

JOHN CHIANG
California State Controller

September 10, 2013

Julio Fuentes, City Manager
Santa Clara Redevelopment/
Successor Agency
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Fuentes:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Santa Clara Redevelopment Agency to the City of Santa Clara or any other public agency after January 1, 2011. This statutory provision states, "The Legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in furtherance of the Community Redevelopment Law and is thereby unauthorized." Therefore, our review included an assessment of whether each asset transfer was allowable and whether it should be turned over to the Santa Clara Redevelopment Successor Agency.

Our review applied to all assets including but not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Santa Clara or any other public agencies have been reversed.

Our review found that the RDA transferred $373,035,072 in assets after January 1, 2011, which included unallowable transfers of assets totaling $278,987,733, or 74.79% that should have been turned over to the Successor Agency.

However, on May 22, 2012, the City of Santa Clara transferred $5,900,000 in unencumbered Low and Moderate Income Housing Fund cash to the Successor Agency under a short-term, no-interest cash flow loan agreement. The loan agreement was approved by the Successor Agency Oversight Board. Therefore, the remaining unallowable assets totaling $273,087,733, or 73.21%, must be turned over to the Successor Agency.

If you have any questions, please contact Steven Mar, Bureau Chief, Local Government Audits Bureau, by phone at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

cc: Gary Ameling, Finance Director
City of Santa Clara
Jamie J. Matthews, Chairperson
Oversight Board
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Redevelopment Agency of the City of Santa Clara (RDA) after January 1, 2011. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and any rights to payments of any kind from any source.

Our review found that the RDA transferred $373,035,072 in assets after January 1, 2011, which included unallowable transfers of assets totaling $278,987,733, or 74.79% that should have been turned over to the Successor Agency. However, on May 22, 2012, the City of Santa Clara (City) transferred $5,900,000 of unencumbered Low and Moderate Income Housing Fund cash to the Successor Agency under a short-term, no-interest cash flow loan agreement. The loan agreement was approved by the Successor Agency Oversight Board. Therefore, the remaining unallowable assets totaling $273,087,733, or 73.21%, must be turned over to the Successor Agency.

Background

In January of 2011, the Governor of the State of California proposed statewide elimination of redevelopment agencies (RDAs) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26 (ABX1 26, Chapter 5, Statutes of 2011, First Extraordinary Session), which was passed by the Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies to oversee dissolution of the RDAs and redistribution of RDA assets.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 was codified in the Health and Safety Code (H&S Code) beginning with section 34161.

In accordance with the requirements of H&S Code section 34167.5, the State Controller is required to review the activities of RDAs, "to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency, or any other public agency, and the redevelopment agency," and the date on which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred after January 1, 2011, between the RDA, the City, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objective, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, and the date upon which the RDA ceased to operate, or January 31, 2012, whichever was earlier, between the city or county, or city and county that created an RDA, or any other public agency, and the RDA, were appropriate.

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Santa Clara City Council, Redevelopment Agency of the City of Santa Clara, the City of Santa Clara Housing Authority, and the Santa Clara Stadium Authority.
- Reviewed accounting records relating to the recording of assets.
- Verified the accuracy of the Asset Transfer Assessment Form. This form was sent to all former RDAs to provide a list of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Conclusion

Our review found that the RDA transferred $373,035,072 in assets after January 1, 2011, which included unallowable transfers of assets totaling $278,987,733, or 74.79% that should have been turned over to the Successor Agency. However, on May 22, 2012, the City transferred $5,900,000 of unencumbered Low and Moderate Income Housing Fund cash to the Successor Agency under a short-term, no-interest cash flow loan agreement. The loan agreement was approved by the Successor Agency Oversight Board. Therefore, the remaining unallowable assets totaling $273,087,733, or 73.21%, must be turned over to the Successor Agency.

Details of our findings are in the Findings and Orders of the Controller section of this report.

Views of Responsible Officials

We issued a draft report on April 2, 2013. Julio J. Fuentes, City Manager, responded by letter dated April 12, 2013 disagreeing with the review results. Subsequently, we issued a revision of Finding 1 on August 8, 2013. The City Manager responded by letter dated August 19, 2013, disagreeing with the revised Finding 1. The City's responses are included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of Santa Clara, the City of Santa Clara Housing Authority, the Successor Agency Oversight Board, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

September 10, 2013

Findings and Orders of the Controller

FINDING 1—Unallowable property transfers to the City of Santa Clara

On March 8, 2011, the Redevelopment Agency of the City of Santa Clara (RDA) transferred capital assets of land, improvements, leases, and subleases to the City of Santa Clara (City). According to the RDA Financial Statement for the period ending June 30, 2011, those assets were valued at $115,059,447 (see Schedule 1), excluding the value of the related leases and subleases, as follows:

SCGCA Property*	(See note below)
Theme Park Land	$ 73,532,992
4949 Great America	8,860,000
Conference Center Property	4,730,000
North/South Parcels	3,185,000
Southern Pacific	1,479,897
Martinson Day Care	1,444,598
Improvements	21,826,960
Total	$ 115,059,447

*NOTE: The value of all assets, except those in the Santa Clara Gateway Cooperation Agreement (SCGCA), are from the values listed in the former RDA accounting records. A discussion concerning the value of the property in the SCGCA is given below.

To accomplish those transfers, the City and RDA entered into an agreement under RDA Resolution No. 11-11 (RA). In exchange for the assets, leases, and subleases transferred, the City reduced the outstanding balance that the RDA owed the City under the SCGCA from $152,243,523 to $16,179,464. At the time of this review, no payments were made to the City by either the RDA or the Successor Agency for the remaining balance.

In 2000, the City and the RDA entered into the SCGCA, under which the City intended to transfer three parcels of property to the RDA at such time as the RDA was required to lease each parcel of the property to a private developer. Only one parcel (Parcel 2) was transferred to the RDA, and the RDA never showed a value on its books for that property. The intent was to wait until all three parcels were transferred before putting a value on the books. The total property originally was acquired by the City in the 1960s. In 1999, the City entered into an agreement with the Irvine Company to develop the property in exchange for a ground lease that provided revenue to the City. Under the SCGCA, Parcel 2 and the lease were transferred to the RDA in exchange for the RDA's agreement to continue to transfer lease payments to the City.

In 2005, the SCGCA was amended to establish a value of "between $72,000,000 and $101,000,000" for all three parcels, and to require the RDA to increase its payment to the City by the amount of the lease agreement revenues that the RDA was to be paid for the following properties:

- Theme Park Land (Great America): The RDA acquired and developed this property using lease revenue bonds issued for that purpose. The RDA entered into a lease agreement with the previous and current operator of the Theme Park to pay off the bonds. Pursuant to the SCGCA amendment, once the lease revenue bonds were paid off in December 2005, the lease revenues would be paid to the City as payments toward the RDA's purchase of the SCGCA properties.
- 4949 Great America (Hilton Hotel): This property was part of the property acquired by the City from the City Electric Department, which acquired it from a private party in 1965. It was transferred to the RDA in 1985 for development purposes. In 1999, the RDA entered into a lease with the hotel developer. All lease payments paid to the RDA were given to the City Electric Department's Fund until 2006, when the RDA agreed to pay the City $8,860,000 in RDA funds for the property and to pay future lease payments to the City.
- North/South Parcels (Great America Theme Park Parking): The RDA acquired this property at the same time it acquired the 4949 Great America property.

The remaining properties transferred to the City under Resolution No. 11-11 (RA) were, with the exception of the improvements, also owned by the RDA. The RDA, in accordance with Health and Safety Code (H&S Code) section 33396, entered into separate agreements with the City requiring any lease payments received by the RDA to be given to the City. Information about the properties is as follows:

- Conference Center Property (including the Techmart Meeting Center and the Hyatt Hotel): The RDA acquired this property from the City in a 1984 agreement under which the RDA agreed to pay the City a total of $4,730,000 over 35 years with interest at 10% per year. In addition, any lease revenue related to the Techmart and Hyatt properties was to be transferred to the City for use as General Fund revenue.
- Southern Pacific: The RDA acquired this property in 1995-96 from the Southern Pacific Transportation Company using low and moderate income housing funding. It was leased to Charities Housing for the construction of affordable housing for women and children recovering from domestic violence. The lease is for $1 per year.
- Martinson Day Care: The RDA acquired this site (part of the conversion of the former Agnews State Hospital) from the State of California in 2003 using RDA funds and $1 million from the original developer. The property was then leased to the Santa Clara Unified School District for $1 per year.

The improvements are expenditures incurred by the RDA to upgrade or improve various City properties, including drainage, wetland mitigations, trails, and sidewalks, etc. Pursuant to H&S Code section 34167(a), assets of the former RDA are to be preserved to pay for enforceable obligations or to be used to fund core government services, including fire protection and schools. However, these assets cannot be used for either of these purposes because the RDA never actually acquired the asset that was being upgraded or improved. Therefore, the improvement expenditures are not subject to the provisions of H&S Code section 34167.5.

However, all other assets transferred to the City in accordance with the agreement entered into under RDA Resolution No. 11-11(RA) are subject to H&S Code section 34167.5 and must be returned to the Successor Agency. In addition, lease payments made to City after December 31, 2010, must also be returned under H&S Code section 34167.5 and 34167(a).

In addition, it appears that some of the properties listed above also may be considered government-purpose or housing and are subject to the provisions of H&S Code section 34181(a) and (c). Under these provisions, the Oversight Board may transfer government-purpose assets to the City (or in the case of the Martinson Day Care property, to the Santa Clara Unified School District) and may transfer housing property to the City Housing Authority as designated under H&S Code section 34176. These transfers are subject to approval by the DOF. See Finding 4 for more information on housing-related assets.

Order of the Controller

Based on H&S Code section 34167.5, the City of Santa Clara is ordered to reverse the transfer of all properties covered by Resolution No. 11-11 (RA), except for the $21,826,960 identified as improvement expenditures described in Schedule 1, and return them to the Successor Agency. The City also is ordered to return to the Successor Agency all lease payments related to these properties made from January 1, 2011 forward. The Successor Agency is directed to dispose of the assets in accordance with H&S Code sections 34177(d) and (e), and 34181.

City's Response to Draft Report

The City responded to an initial version of Finding 1 in a letter dated April 12, 2013 (Attachment 1). Subsequently, the SCO issued a revised Finding 1 (Attachment 2) on August 8, 2013, and the City responded to the revision with a letter dated August 19, 2013 (Attachment 3). The SCO's comments to the two responses are given below.

City's April 12, 2013 Response: Generally the revised Finding 1 narrative adequately addresses many of the issues raised by the City in its response. The SCO comments will be limited to the issues that require additional clarification.

- See City's comments in paragraph 3 of its response to Finding 1.

SCO Comments

The City's comments regarding assets that may be considered housing is adequately addressed in the revised draft Finding 1 narrative and in the Finding 4 narrative.

- See City's comments in paragraphs 4-6 of its response to Finding 1.

SCO Comments

The lease agreements between the RDA and third parties under the SCGCA do not qualify as a third-party exemption under H&S Code section 34167.5.

- See City's comments in paragraph 7 of its response to Finding 1.

SCO Comments

While the lease payments received by the City under the SCGCA have been used by the City as general fund revenue, it does not appear that this was intended to continue indefinitely as a revenue stream. As noted by the City, the 2005 amendment to the SCGCA clarified that the transfer of lease revenue to the City was intended to repay the City for the property it transferred to the RDA

- See City's comments in paragraph 8-9 of its response to Finding 1.

SCO Comments

The SCO agrees that the Southern Pacific Property, the Martinson Day Care Center, and the Conference Center Property were originally acquired by the RDA. However, while the remaining properties were originally acquired by the City, they were sold to the RDA under the SCGCA at a price agreed to under the 2005 amendment.

Also, the City's assertion that the SCO's authority under H&S Code section 34167.5 is limited to assets related to tax increment funding is incorrect. No such limit is listed in either that section or section 34181 (as amended by AB 1484).

- See City's comments in paragraph 11 of its response to Finding 1:

SCO Comments

The SCO has no authority to order the Successor Agency and/or the Oversight Board to take any specific action on the disposition of assets or related agreements. Under the RDA dissolution legislation, the Department of Finance has sole authority to review and approve Successor Agency and Oversight Board activities.

City's August 19, 2013 Response: Generally, the revised Finding 1 narrative and the SCO comments regarding selected issues raised by the City in its April 12, 2013 response (see above) adequately address many of the issues raised by the City in its August 19, 2013 response. The SCO comments will be limited to those that required additional clarification.

- See City's comments in paragraph 2 of its response to Finding 1:

  SCO Comments

  The SCO has no authority to order the Successor Agency and/or the Oversight Board to take any specific action on the dispossession of assets or related agreements. However, we agree that the Successor Agency and the Oversight Board may consider the provisions of H&S Code section 34180(h) in determining the disposition of these assets and related agreements. As noted by the City, this will require the Successor Agency and the Oversight Board to use the ROPS process to seek approval by the Department of Finance.

- See City's comments in paragraph 8-11 of its response to Finding 1:

  SCO Comments

  SCO's authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA, or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation, including H&S Code section 34167(d), which allowed the RDA to continue to make payment under enforceable obligations to private third parties.

  Also, as noted above, under H&S Code section 34180(h), the Successor Agency and the Oversight Board, with approval by the Department of Finance, may take action to reestablish all or part of the agreements (including leases), that are at issue in Finding 1.

The Finding and Order of the Controller remain as stated.

FINDING 2—March 2011 transfer of cash to the City

On March 8, 2011, the RDA transferred $69,685,251 in cash to the City for existing and future capital improvement projects and construction of a new library. The $69,685,251 was based on June 30, 2011 RDA financial statements (see Schedule 2). To accomplish those transfers, the City and the RDA entered into agreements under RDA Resolution Nos. 11-4 (RA), 11-5 (RA) and 11-6 (RA).

According to the City, the following amounts were from RDA bonds issued at various times both prior to and after January 1, 2011, with the last issuance in May 2011:

Tasman Drive Parking	$ 40,498,090
Northside Branch Library	19,295,954
Walsh Avenue Sewer	2,881,807
San Tomas Aquino Creek Trails	589,248
Convention Center Parking Improvements	183,620
Improvements to Yerba Buena/Great America	1,848,931
Total	$ 65,297,650

Those projects appear to have been contractually committed to a third party prior to June 28, 2011 (some contracts were executed prior to January 1, 2011 and some were completed prior to June 28, 2011). The exception is the Northside Branch Library, for which contracted commitments were not made until January 31, 2012, and February 1, 2012. Work on the library is nearly complete. As the library could be considered a government-purpose asset, the City need not transfer the building to the Successor Agency; however, the $19,295,954 in funds provided to the City for the library must be turned over to the Successor Agency.

In addition, it appears that completed projects may have unexpended funds, and projects still in progress may have unexpended funds when completed. For example, the City entered into contracts prior to June 28, 2011 with third parties to design and construct the Tasman Drive Parking project, totaling $29,835,587, and approved a contract related to the project after that date of $204,000. While additional expenditures may be required to complete this project, the full $40,498,090 may not be needed.

The remaining $4,387,601 in cash is not identified with any project or source of funds, nor is there any indication that these funds were contractually committed to a third party prior to June 28, 2011.

Pursuant to H&S Code section 34167.5, any cash asset transfers by the RDA to the City after January 1, 2011, that were not contractually committed to a third party prior to June 28, 2011, the effective date of ABX1 26, must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d) and (e). This includes all funding provided for the Northside Branch Library project, any remaining funds from the other projects, and the $4,387,600.49 in cash that is unidentified as to project or source of funds.

Pursuant to H&S Code section 34177(i) the Successor Agency is obligated to use these funds in accordance with the terms of the bond issue requirements. Expenditures will need to be included on an ROPS and approved by the Oversight Board and the DOF.

Also, it appears that some of the projects may be considered government-purpose or housing under H&S Code section 34181(a) and (c).

Order of the Controller

Based on H&S Code section 34167.5, the City of Santa Clara is ordered to turn over the total funding provided for the Northside Branch Library project, any excess funding associated with the other projects listed above upon completion of the projects, and $4,347,601 of undesignated funds, as described in Schedule 1, to the Successor Agency. The Oversight Board is directed to dispose of these funds in accordance with H&S Code section 34177(d), (e), and (i), and section 34181.

City's Response to Draft

See City's comments in paragraphs 2 and 3 of its April 12, 2013 response to Finding 2.

SCO Comments

We agree that the cash was transferred by the RDA to the City to construct the Northside Branch Library. However, H&S Code section 34167.5 allows such assets to be retained by the City if they have been "contractually committed to a third party for the expenditure or encumbrance of those assets." The last date by which such contractual commitments must be in place is June 27, 2011 because this section became effective on June 28, 2011. The City did not contractually commit these funds to the Library Foundation until January 2012, well after this date. H&S Code section 34167.5 also states that: "The legislature hereby finds that a transfer of assets by a redevelopment agency during the period covered in this section is deemed not to be in the furtherance of the Community Redevelopment Law and is thereby unauthorized." The period referred to is any transfer made after January 1, 2011.

See City's comments in paragraph 4 of its April 12, 2013 response to Finding 2.

SCO Comments

The SCO has no authority to defer our order regarding the unencumbered cash of $4.3 million. However, under H&S Code section 34177(i) the Successor Agency is required to use these funds in accordance with the intent of the bond covenants.

See City's comments in paragraph 5 of its April 12, 2013 response to Finding 2.

SCO Comments

The SCO has no authority to defer our order regarding excess funds. However, our order does state the transfer should be made after the amount is determined after completion of the projects.

The Finding and Order of the Controller remains as stated.

FINDING 3— June 2011 transfer of cash to the City

On June 30, 2011, the RDA transferred $25,205,589 in cash to the City pursuant to cooperation agreements between the RDA and the City under RDA Resolution Nos. 11-4 (RA), 11-5 (RA) and 11-6 (RA). Of this amount, $25,000,000 is RDA bond proceeds from a May 2011 issuance. The RDA and the City agreed to transfer these funds to ensure that certain capital projects described in the Official Statement for the bonds are carried out. However, no contractual commitment of these funds was made prior to June 28, 2011. Pursuant to H&S Code section 34167.5 these funds and the remaining $205,589 must be turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177(d) and (e). In addition, the Successor Agency must carry out any responsibilities associated with the bond funding pursuant to H&S Code section 34177(i). Any expenditure of these funds must be included on an ROPS and approved by the Oversight Board and the Department of Finance.

Order of the Controller

Based on H&S Code section 34167.5, the City of Santa Clara is ordered to reverse the transfer of the cash assets listed above, as described in Schedule 1, and return them to the Successor Agency. The Oversight Board is directed to dispose of the assets in accordance with H&S Code section 34177(d), (e) and (i), and section 34181.

City's Response to Draft

See City's comments in paragraph 3 of its April 12, 2013 response to Finding 3.

SCO Comments

The RDA had no authority to transfer the bond proceeds to the City to "ensure the use of the bond proceeds for the purposes for which they were issued." That responsibility is specifically assigned to the Successor Agency and the Oversight Board under H&S Code section 34177(i).

The Finding and Order of the Controller remains as stated.

FINDING 4—Unallowable transfers to the City of Santa Clara Housing Authority

The RDA made the following transfers of housing assets to the City of Santa Clara Housing Authority:

- From January 1, 2011, through January 31, 2011, the RDA transferred housing assets listed at $136,866,103, to the Santa Clara Housing Authority, which had been designated as the local agency to receive such assets pursuant to H&S Code section 34176. The assets included some Low and Moderate Income Housing Fund cash.

- On May 22, 2012, the City transferred $5,900,000 of unencumbered Low and Moderate Income Housing Fund cash back to the Successor Agency. To accomplish this transfer, the Successor Agency entered into a short-term, no-interest cash flow loan agreement with the City of Santa Clara, approved by the Oversight Board. The funding was used by the Successor Agency to pay debt obligations. The loan has not been repaid.

Pursuant to H&S Code Section 34175(b), "[a]ll assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012." In addition, pursuant to H&S Code section 34177(e), the Successor Agency is to dispose of all former RDA assets "…as directed by the oversight board…". Also, pursuant to H&S Code section 34177(g) the Successor Agency is to "[e]ffectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176." Finally, H&S Code section 34181(c) requires the Oversight Board to direct the Successor Agency to "[t]ransfer housing assets pursuant to Section 34176."

In this instance, the former RDA failed to comply with H&S Code section 34175(b) and did not transfer the housing assets to the Successor Agency. Until that transfer is made, the Oversight Board has been denied the opportunity to make a decision under H&S Code section 34181(c), and the original transfer to the Santa Clara Housing Authority by the RDA is unallowable. Therefore, the assets must be turned over to the Successor Agency pursuant to H&S Code section 34167.5.

The City questioned whether the DOF's lack of "objection" to the RDA housing asset transfers that were included on the report submitted by the Santa Clara Housing Agency as required by H&S Code section 34176(a)(2) means that those transfers are approved. The information that was required to be on the housing report related solely to transfers made after February 1, 2012 by the Successor Agency with the approval of the Oversight Board. In discussions with the DOF, the City concurred that the report was not intended to include transfers made prior to February 1, 2012.

Any unencumbered Low and Moderate Income Housing Fund cash received by the Successor Agency must be approved by the Oversight Board under H&S Code section 34181(c), and distributed to the County Auditor-Controller in accordance with H&S Code section 34177(d). The County Auditor-Controller is required to distribute the funds in accordance with H&S Code section 34188.

Order of the Controller

Based on H&S Code section 34167.5 the Santa Clara Housing Authority is ordered to turn over all housing assets (less the $5.9 million loan from the Low and Moderate Income Housing Fund), as described in Schedule 2, to the Successor Agency. The Oversight Board is directed to dispose of all housing assets in accordance with H&S Code section 34181(c), including distribution of Low and Moderate Income Housing Fund cash to the County Auditor-Controller in accordance with H&S Code section 34177(d).

City's Response to Draft

See City's comments in paragraph 1 through 5 of its April 12, 2013 response to Finding 4.

SCO Comments

The SCO believes a complete response to the City's comments has been provided in the narrative for Finding 4 in the draft report issued by the SCO and that no additional comment is necessary.

The Finding and Order of the Controller remains as stated.

Schedule 1—
Unallowable RDA Asset Transfers to the City of Santa Clara[1] January 1, 2011, through January 31, 2012

Capital Assets	
Land	$ 115,059,447
Improvements	(21,826,960)
Current Assets	
Cash Transfer to the City for Capital Projects (Construction and Capital Improvements)	69,685,251
Cash Committed to Third Parties Prior to June 28, 2011	(46,001,697)
Cash Transfer to the City for Capital Projects	25,205,589
Total Unallowable Transfers—City of Santa Clara	$ 142,121,630

[1] See the Findings and Orders of the Controller section.

Schedule 2—
Unallowable RDA Asset Transfers to the City of Santa Clara Housing Authority[1]
January 1, 2011, through January 31, 2012

Current Assets		
Cash	$	63,452,234
Loan Receivables		66,310,099
Land Held for Resale		7,103,770
Cash Transferred to the Successor Agency		(5,900,000)
Total Unallowable Transfers—Housing Authority	$	130,966,103

[1] See the Findings and Orders of the Controller section.

Attachment 1—
City of Santa Clara's Response to Draft Review Report

SANTA CLARA CALIFORNIA

Santa Clara
All-America City
2001

Julio J. Fuentes
City Manager

April 12, 2013

Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Certified Mail – Return Receipt Requested

Dear Mr. Mar:

The City of Santa Clara Acting as the Successor Agency ("Successor Agency") to the former Santa Clara Redevelopment Agency ("RDA"), the Santa Clara Housing Authority ("Housing Authority"), the Santa Clara Stadium Authority ("SCSA") and the City of Santa Clara ("City") appreciates and welcomes the opportunity to comment on and provide corrections to the Draft Santa Clara Redevelopment Agency Asset Transfer Review Report (January 1, 2011 Through January 31, 2012), dated April 2, 2013. (See attached.) These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with AB x1 26, AB 1484 and other applicable law.

The response provided herein does not waive the right of the Successor Agency, the Housing Authority, the SCSA and the City to later provide additional information or statements as part of the review process. The Successor Agency, the Housing Authority, the SCSA and the City retain the right to raise new materials or positions as required.

GENERAL RESPONSE

1. The City's, the Housing Authority's, the SCSA's and the Successor Agency's review of the State Controller preliminary findings is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the City's, the Housing Authority's, the SCSA's, and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding.

2. By making the accompanying responses and objections, the City, the Housing Authority, the SCSA, and the Successor Agency do not waive, and hereby expressly reserve, their right to assert any and all objections as to the State Controller findings and statements in this review, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City and the Successor Agency make the responses herein without in any way implying that they consider all of the State Controller findings and statements, to be legally valid or within the scope of AB x1 26 relevant or material to the subject matter of this action.

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1500 Warburton Avenue
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3. The City, the Housing Authority, the SCSA and the Successor Agency reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information, in one or more subsequent supplemental response(s).

SPECIFIC RESPONSE

1. **Finding 1- Unallowable property transfers to the City of Santa Clara**

As a preliminary matter, the Report states that the RDA made unallowable asset transfers to the City and that the assets were not committed to a third party by the City prior to June 28, 2011. The statement attempts to read into Health and Safety Code Section 34167.5 and AB x1 26 as a whole a prohibition on the activities of the City after passage of AB x1 26 that does not exist. AB x1 26 prohibits former redevelopment agencies from taking certain actions as of June 28, 2011 but does not contain any prohibition on actions taken by other public agencies.

The Report orders the return of $115,059,447 in land, real property and improvements transferred to the City. The real property included in this order includes the following properties :

Conference Center Property	$4,730,000
North/South Parcels	$3,185,000
Theme Park Land	$73,532,992
Southern Pacific	$1,479,897
4949 Great America	$8,860,000
Martinson Day Care	$1,444,598

The Southern Pacific Property valued at $1,479,897 was property purchased with Low and Moderate Income Housing Funds for the purposes of affordable housing. The property is currently occupied by a women's shelter. The property was listed on the Housing Asset List submitted to the Department of Finance ("DOF") on August 1, 2012 and was not objected to by the DOF. The Southern Pacific Property constitutes a housing asset subject to transfer to the Housing Successor, which is the City and should remain with the City for these purposes.

The remaining properties are not subject to the Controller's order to reverse the transfer because the properties are committed to third parties. The City, as transferee and current owner of the properties, has various contractual commitments to third parties, encumbering the properties, and thus the properties are not an available asset that can be returned to the Successor Agency.

The properties were conveyed for fair market value from the RDA to the City in March 2011 and are contractually committed to various third parties pursuant to a myriad of contracts. Each of the properties is the subject of leases that extend for years into the future. For

example, the Theme Park Land is encumbered by a Ground Lease that has a term extending until 2074 and also includes a right of first refusal allowing the lessee to meet any offers received for the purchase of the property. The original Ground Lease was extended by the City recently in exchange for the lessee, Cedar Fair, waiving certain parking rights over City owned land originally granted under the Ground Lease and providing joint use of the remaining parking facilities. These amendments are evidenced by a Ground Lease Amendment, a Parking Agreement and Parking Easement Agreement, all of which were validly entered into by the City and have been relied upon not only by the lessee, Cedar Fair, but also the 49ers Stadium Company, who is a party to the Parking Agreement and the Parking Easement and the beneficiary of certain parking rights granted under the Parking Agreement and the Easements. The Parking Agreement and Parking Easement also cover the properties referred to as the North/South Parcels. The City's actions in entering into the Fourth Amendment to the Ground Lease, the Parking Agreement and the Easement were not prohibited by any laws in effect at the time the actions and contracts were approved and Cedar Fair and the 49ers are justified in relying upon these actions as binding commitments.

Similar long term lease arrangements exist for the remaining properties resulting in long term commitments of the assets. The Conference Center Property consists of the Santa Clara Convention Center which sits on land previously owned by the City and conveyed to the Agency for purposes of constructing the Convention Center . The Convention Center Property is subject to an assessment district covering the adjacent property that provides funding for the maintenance of shared parking. The City has always and continues to pay the annual maintenance costs assessed to the Convention Center Property. 4949 Great America is property developed with the Hilton Hotel and is subject to a lease that extends through 2054 with three ten year renewal options. The Martinson Day Care Center Property is property that is currently leased to the Santa Clara Unified School District for a nominal rent.

It should also be noted that all of the properties listed above were originally acquired by the City and transferred to the RDA pursuant to Health and Safety Code Section 33396 which continues to remain in full force and effect. Health and Safety Code Section 33396 allowed a redevelopment agency to acquire property from a public entity if requested to do so by the legislative body that created the redevelopment agency. Pursuant to Section 33396, at the discretion of the legislative body, all of the lease or sales proceeds from the property could be paid to the community or the public entity from which the property was acquired. It is important to note that this section makes clear that the discretionary actions regarding the transfer of the property and the determination that the lease revenues be paid to the community are to be taken by the city council, not the redevelopment agency board. This section expresses a clear legislative intent to allow cities to use their redevelopment agencies as conduits for the transfer of property to private parties while preserving the benefits of that transfer to the city. The Cooperation Agreements entered into between the City and the former RDA amplified the intent of the Section 33396 by stating explicitly that the lease revenues paid to the City pursuant to the agreements were to be treated as general fund revenues of the City and could be used for general municipal purposes. Many of these

agreements have been in place for over 25 years. Section 34171(b) states that successor agencies succeed to all rights, powers, duties and obligations previously vested with the former redevelopment agency under the Community Redevelopment Law except for those provisions of the CRL that are repealed, restricted or revised pursuant to the dissolution Act. Section 33396 was not repealed, restricted or revised.

Furthermore, except for the Southern Pacific Property, the Martinson Day Care Center and the Conference Center Property, all of the properties in question were originally acquired by the City, not the RDA . Tax increment funds were not used for the acquisition or purchase of the properties. This includes the Theme Park property that was acquired by the redevelopment agency with the use of revenues bonds, originally repaid from the operating revenues of the Theme Park and then from lease revenues paid by the private third party owner and operator of the Park. The purpose of the Dissolution Act is to provide the taxing entities with the property taxes that were otherwise diverted to redevelopment agencies as tax increment. It was not to provide the taxing entities with a windfall gain obtained from the prudent investment by the City of general fund resources in a manner designed to provide ongoing revenues to the City's general fund. The reversal of the transfer of the properties to the Successor Agency will have just such a result and will deprive the City of general fund revenues to which it is properly and legally entitled.

Reversal of the property transfers would also result in a violation of the State Constitution. Under Section 25.5(a)(3) of Article XIII of the California Constitution, the Legislature is prohibited from enacting any statute to change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring. An unwinding of the March 2011 conveyance in conjunction with the application of the provisions of the Dissolution Act that nullifies agreements between the City and the former RDA effective February 1, 2012 would result in a violation of Section 25.5 (a)(3) of Article XIII of the California Constitution because it would result in an illegal windfall to other taxing agencies to the detriment of the City and the City's general fund.

The City acquired the Properties in the 1960s to the 1980s with general fund tax and utility revenues. The City subsequently transferred the Properties to the RDA in exchange for a revenue stream of ground lease payments in lieu of cash payments of tax increment. None of the taxing entities collecting ad valorem property taxes had any claim to the revenues generated by the leases. The City has always and continues to utilize the lease payments it receives to fund core government services. A reversal of the transfer of the properties to the Successor Agency could result in a reallocation of substantial amounts in property tax revenues from the City to other taxing entities by arbitrarily invalidating the various contracts entered into between the RDA and the City in the 1980s (decades before the Governor proposed the dissolution of redevelopment agencies), resulting in an illegal redistribution of

ad valorem property taxes because AB x1 26 was not passed by roll call vote entered in the journal with at least two-thirds of the members concurring.

If the Controller's Office determines that a reversal of the transfer of the properties is required then, in order to avoid an unconstitutional result it must also order the Successor Agency and the Oversight Board to approve continuing the agreements previously entered into between the City and the former RDA that provided for the lease revenues to pass through to the City.

The Controller's Order also states that the remaining amounts owed under the Santa Clara Gateway Cooperation Agreement are no longer an obligation of the Successor Agency. However, this statement fails to acknowledge that the amount owed, listed in the report as $16,179,464 represents a significant reduction in Successor Agency debt that was relieved by the transfer of the properties. If the transfer of the properties is to be reversed, then the full amount of the debt needs to be restored. Additionally, as with the other agreements entered into between the City and the former RDA related to property transfers, the SCGCA is subject to the provisions of Health and Safety Code Section 34180(h) and the Controller, in order to preserve equity and not deprive the City of its general fund revenues, must also order that Successor Agency and the Oversight Board to approve continuing the SCGCA.

2. **Finding 2- March 2011 transfer of cash to the City**

The report also orders the return of certain cash transfers made by the former RDA to the City, including $19,295,954 related to the Northside Branch Library, any excess funds associated with projects that are not yet complete and $4,387,601 of undesignated funds .

$19,295,953.02 of what is designated as cash transferred to the City in the Report was allocated to the construction of a Northside Branch Library. The Library has been part of the City's Capital Improvement Program since fiscal year 2002-03. The RDA issued bonds in 2003 which included the library branch as one of the bond funded projects. The City entered into a contract with the Santa Clara Library Foundation in January 2012 whereby the City provided the Library Foundation with the funds to construct the library in return for the Foundation undertaking the construction. The Library Foundation has issued a construction contract for the library and construction is currently under way. The Controller cannot order the reversal of the transfer of these assets since they are committed to third parties.

The Controller's report states that the library is a government purpose asset so it need not be transferred but that the funds used to construct that asset must be transferred. This statement in the Controller's Report points out the impossibility of complying with the Controller's Order and the contradiction of the order with the Dissolution Statute. The funds ordered returned have been spent and indeed were contractually committed to a third party, the Santa Clara Library Foundation, long before the Controller's Order. Section 34167.5 states "If such an asset transfer did occur during that period and the government agency that received the

assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011, to the successor agency..." The Controller's Order with respect to the $19,295,953.02 that was used to construct the Northside Library Branch does not conform to the requirements of Section 34167.5. First, Section 34167.5 is clear that only the available assets are to be returned. The funds used to construct the library are not available since the library, as acknowledged by the Controller is nearly complete. Additionally, Section 34167.5 contains no reference to when the government entity receiving the assets was required to commit the assets to a third party but rather states clearly that if the asset "is not contractually committed" which only makes grammatical sense in referring to the time at which the Controller's Order is issued. The Legislature has proved itself adept at distinguishing the effective date of various parts of the Dissolution Act and in fact, the Dissolution Act in numerous places refers to specific dates on which certain actions are either prohibited or permitted. However, in Section 34167.5, the Legislature used the term "is" and one must assume that they did so with the intent of using the present tense. Thus the order to return funds that were committed prior to the Controller's Order violated the statute.

With respect to the unencumbered funds, the Successor Agency is now working on completion of the Other Funds Due Diligence Review as required by Health and Safety Code Section 34179.5. That process is the more appropriate process for determining the actual amount of the unencumbered funds. Until completion of that process the Successor Agency cannot verify the accuracy of the Controller's numbers in the Report. The Successor Agency would request that the Controller defer its order on the unencumbered cash until completion of this process in order to ensure accuracy of the amounts.

The Controller's Report also orders the City to return any unexpended funds once the various projects listed in the report are completed. It should be noted that the projects listed and the funds allocated to those projects are for the most part bonds proceeds from bonds issued prior to 2011. Although the Successor Agency does not object to the return of the unexpended portions of the bond proceeds upon completion of the projects, assuming there are unexpended funds, these funds must be spent in accordance with the bond covenants and not distributed to the taxing entities.

3. **Finding 3- June 2011 Transfer of Cash to the City**

The report also orders the return of $25,205,589 in bond proceeds. Of that amount, $25,000,000 is bond proceeds from bonds issued by the RDA in May 2011. The bonds were validly authorized and the RDA had full authority at the time of the issuance of the bonds to do so. The bonds were issued in order to complete certain capital improvement projects on behalf of the City as specified in the Official Statement for the bonds. The bond proceeds were transferred to the City in order to ensure the use of the bond proceeds for the purposes for which they were issued.

4. **Finding 4- Unallowable transfers to the City of Santa Clara Housing Authority**

The Report lists $136,866,103 in housing assets transferred to the Santa Clara Housing Authority but acknowledges that $5.9 million of that amount has already been returned to the Successor Agency for the payment of enforceable obligations. The Controller orders the return of these assets primarily on the basis that the Controller reads the Dissolution Act as requiring that the Housing Assets first be transferred to the Successor Agency and only transferred to the Housing Successor after approval by the Oversight Board pursuant to Health and Safety Code Section 34181(c) and the approval of the Oversight Board action by the DOF, which DOF approval can take up to 100 days after the Oversight Board action. The Controller's Order fails to acknowledge the provisions of Health and Safety Code Section 34176, which by operation of law transfers the housing assets to the housing successor and also fails to recognize the actions of the DOF which has treated the assets as appropriately transferred to the Housing Successor. It would appear from the Controller's order that if the assets are to be returned to the Successor Agency, then all costs and expenditures related to those assets including monitoring of affordability covenants must also be the responsibility of the Successor Agency until the transfer of the assets is approved by the DOF.

The Dissolution Statute is clear in Section 34176 that "all rights, powers, duties, obligations and housing assets, as defined in subdivision (e) excluding any amounts on deposit in the Low and Moderate Income Housing Fund and enforceable obligations retained by the successor agency, shall be transferred to the city, county, or city and county." Section 34176 does not state "shall be transferred after approval of the Oversight Board" but rather by operation of law orders the transfer of the housing assets. The Controller's Report also notes that submission of a Housing Asset Transfer List to the DOF and the approval of such list by the DOF does not indicate transfer of the assets and that the intent of the Housing Asset Transfer List is only to show those transfers that occurred from the Successor Agency to the Housing Successor after February 1, 2012 and pursuant to an approved transfer by the Oversight Board. Section 34176(a)(2) states that the housing asset transfer list "shall include assets transferred between February 1, 2012 and the date upon which the list of created." The use of the word include indicates a legislative intent to cover not only those transfers that were to occur by operation of law pursuant to Section 34176(a)(1) as well as other transfers that may have occurred post dissolution.

If, the Controller's Report asserts that the Housing Asset Transfer List was to only list those transfers that occurred after February 1, 2012 and pursuant to a transfer approved by the Oversight Board, then the DOF should have ordered the return of all of the assets listed on the Housing Asset Transfer List but instead, as stated in its letter of March 21, 2013, only has ordered the return to the Successor Agency of certain assets that it has deemed are not housing assets as defined in the statute.

It should be noted as well that pursuant to Health and Safety Code Section 34178.8, if as the Controller asserts the housing assets were to be transferred to the Successor Agency from the former RDA on February 1, 2012, then the Controller has no jurisdiction over these transfers. Section 34178.8 is clear that with regards to transfers occurring after January 31, 2012, the Controller's jurisdiction does not extend to housing assets.

Additionally, with regards to the unencumbered Low and Moderate Income Housing Fund, the Successor Agency recently participated in a meet and confer with the DOF regarding the Housing Fund Due Diligence Review, the purpose of which was to determine the unencumbered Housing Fund balance in accordance with Health and Safety Code Section 34179.5 for the Low and Moderate Income Housing Fund. The City, the Housing Authority and the Successor Agency therefore request that this part of the State Controller's Report be amended or stayed pending completion of the DOF meet and confer process on the Housing Asset List and the Due Diligence Review process.

CONCLUSION

For these reasons, we respectfully request that the Office of the State Controller revise its findings expressed in the Draft Report for the wind down of the former Santa Clara Redevelopment Agency.

Sincerely,

Julio J. Fuentes
City Manager

JJF:yfg

Attachment

cc: Jeffrey V. Brownfield, Chief, Division of Audits, State Controller's Office (via e-mail)
Walter Barnes, Program Lead, Division of Audits, State Controller's Office (via e-mail)
Betty Moya, Audit Manager, Division of Audits, State Controller's Office (via e-mail)
Tuan Tran, Auditor-in-Charge, Division of Audits, State Controller's Office (via e-mail)
Alan Kurotori, Assistant City Manager, City of Santa Clara (via e-mail)
Richard Nosky, City Attorney, City of Santa Clara (via e-mail)
Gary Ameling, Director of Finance, City of Santa Clara (via e-mail)
Tamera Haas, Assistant Finance Director, City of Santa Clara (via e-mail)
Karen Tiedemann, Esq., Goldfarb & Lipman LLP (via e-mail)
Theodore M. Ballmer, Esq., Kane, Ballmer & Berkman (via e-mail)

Attachment 2—
SCO Revised Finding 1

JOHN CHIANG
California State Controller

August 8, 2013

Julio Fuentes, City Manager
Santa Clara Redevelopment/
Successor Agency
1500 Warburton Avenue
Santa Clara, CA 95050

Dear Mr. Fuentes:

The State Controller's Office has made a change to the findings in the draft redevelopment agency asset transfer review report dated April 2, 2013. This change was discussed with your staff in a phone conversation on July 24, 2013. A copy of the revised finding along with a revised Schedule 1 is enclosed.

Please submit any comments concerning the revised finding within 10 calendar days after you receive this letter. In particular, you should address the accuracy of our revised finding. We may modify the revised finding in the final report based on your comments. In the final report, we will include your comments regarding the revised finding, along with any other comments you previously provided regarding the other three findings included in the draft report.

Please send your response to Steven Mar, Chief, Local Government Audits Bureau, State Controller's Office, Division of Audits, Post Office Box 942850, Sacramento, California 94250-5874. If we do not receive your comments within the specified time, we will release the report, with the revised finding, as final.

The revised finding, like the original draft asset transfer review report, is confidential. We limit access to the revised finding and distribution to those referenced in the letter. However, when we issue the final report, it becomes a public record.

If you have any questions, please contact Mr. Mar at (916) 324-7226.

Sincerely,

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

Attachment

Findings and Orders of the Controller

FINDING 1—Unallowable property transfers to the City of Santa Clara

On March 8, 2011, the Redevelopment Agency of the City of Santa Clara (RDA) transferred capital assets of land, improvements, leases, and subleases to the City of Santa Clara (City). According to the RDA Financial Statement for the period ending June 30, 2011, those assets were valued at $115,059,447 (see Schedule 1), excluding the value of the related leases and subleases, as follows:

SCGCA Property*	(See note below)
Theme Park Land	$ 73,532,992
4949 Great America	8,860,000
Conference Center Property	4,730,000
North/South Parcels	3,185,000
Southern Pacific	1,479,897
Martinson Day Care	1,444,598
Improvements	21,826,960
Total	$ 115,059,447

*NOTE: The value of all assets, except those in the Santa Clara Gateway Cooperation Agreement (SCGCA), are from the values listed in the former RDA accounting records. A discussion concerning the value of the property in the SCGCA is given below.

To accomplish those transfers, the City and RDA entered into an agreement under RDA Resolution No. 11-11 (RA). In exchange for the assets, leases, and subleases transferred, the City reduced the outstanding balance that the RDA owed the City under the SCGCA from $152,243,523 to $16,179,464. At the time of this review, no payments were made to the City by either the RDA or the Successor Agency for the remaining balance.

In 2000, the City and the RDA entered into the SCGCA, under which the City intended to transfer three parcels of property to the RDA at such time as the RDA was required to lease each parcel of the property to a private developer. Only one parcel (Parcel 2) was transferred to the RDA, and the RDA never showed a value on its books for that property. The intent was to wait until all three parcels were transferred before putting a value on the books. The total property originally was acquired by the City in the 1960s. In 1999, the City entered into an agreement with the Irvine Company to develop the property in exchange for a ground lease that provided revenue to the City. Under the SCGCA, Parcel 2 and the lease were transferred to the RDA in exchange for the RDA's agreement to continue to transfer lease payments to the City.

In 2005, the SCGCA was amended to establish a value of "between $72,000,000 and $101,000,000" for all three parcels, and to require the RDA to increase its payment to the City by the amount of the lease agreement revenues that the RDA was to be paid for the following properties:

- Theme Park Land (Great America): The RDA acquired and developed this property using lease revenue bonds issued for that purpose. The RDA entered into a lease agreement with the previous and current operator of the Theme Park to pay off the bonds. Pursuant to the SCGCA amendment, once the lease revenue bonds were paid off in December 2005, the lease revenues would be paid to the City as payments toward the RDA's purchase of the SCGCA properties.
- 4949 Great America (Hilton Hotel): This property was part of the property acquired by the City from the City Electric Department, which acquired it from a private party in 1965. It was transferred to the RDA in 1985 for development purposes. In 1999, the RDA entered into a lease with the hotel developer. All lease payments paid to the RDA were given to the City Electric Department's Fund until 2006, when the RDA agreed to pay the City $8,860,000 in RDA funds for the property and to pay future lease payments to the City.
- North/South Parcels (Great America Theme Parking): The RDA acquired this property at the same time it acquired the 4949 Great America property.

The remaining properties transferred to the City under Resolution No. 11-11 (RA) were, with the exception of the improvements, also owned by the RDA. The RDA, in accordance with Health and Safety Code (H&S Code) section 33396, entered into separate agreements with the City requiring any lease payments received by the RDA to be given to the City. Information about the properties is as follows:

- Conference Center Property (including the Techmart Meeting Center and the Hyatt Hotel): The RDA acquired this property from the City in a 1984 agreement under which the RDA agreed to pay the City a total of $4,730,000 over 35 years with interest at 10% per year. In addition, any lease revenue related to the Techmart and Hyatt properties was to be transferred to the City for use as General Fund revenue.
- Southern Pacific: The RDA acquired this property in 1995-96 from the Southern Pacific Transportation Company using low and moderate income housing funding. It was leased to Charities Housing for the construction of affordable housing for women and children recovering from domestic violence. The lease is for $1 per year.
- Martinson Day Care: The RDA acquired this site (part of the conversion of the former Agnews State Hospital) from the State of California in 2003 using RDA funds and $1 million from the original developer. The property was then leased to the Santa Clara Unified School District for $1 per year.

The improvements are expenditures incurred by the RDA to upgrade or improve various City properties, including drainage, wetland mitigations, trails, and sidewalks, etc. Pursuant to H&S Code section 34167(a), assets of the former RDA are to be preserved to pay for enforceable obligations or to be used to fund core government services, including fire protection and schools. However, these assets cannot be used for either of these purposes because the RDA never actually acquired the asset that was being upgraded or improved. Therefore, the improvement expenditures are not subject to the provisions of H&S Code section 34167.5.

However, all other assets transferred to the City in accordance with the agreement entered into under RDA Resolution No. 11-11(RA) are subject to H&S Code section 34167.5 and must be returned to the Successor Agency. In addition, lease payments made to City after December 31, 2010, must also be returned under H&S Code section 34167.5 and 34167(a).

In addition, it appears that some of the properties listed above also may be considered government-purpose or housing and are subject to the provisions of H&S Code section 34181(a) and (c). Under these provisions, the Oversight Board may transfer government-purpose assets to the City (or in the case of the Martinson Day Care property, to the Santa Clara Unified School District) and may transfer housing property to the City Housing Authority as designated under H&S Code section 34176. These transfers are subject to approval by the DOF. See Finding 4 for more information on housing-related assets.

Order of the Controller

Based on H&S Code section 34167.5, the City of Santa Clara is ordered to reverse the transfer of all properties covered by Resolution No. 11-11 (RA), except for the $21,826,960 identified as improvement expenditures described in Schedule 1, and return them to the Successor Agency. The City also is ordered to return to the Successor Agency all lease payments related to these properties made from January 1, 2011 forward. The Successor Agency is directed to dispose of the assets in accordance with H&S Code sections 34177(d) and (e), and 34181.

Attachment 3—
City of Santa Clara's Response to Revised Finding 1 of Draft Review Report

SANTA CLARA CALIFORNIA

Santa Clara
All-America City
2001

Julio J. Fuentes
City Manager

August 19, 2013

Mr. Steven Mar, Chief
Local Government Audits Bureau
State Controller's Office - Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Dear Mr. Mar:

The City of Santa Clara Acting as the Successor Agency ("Successor Agency") to the former Santa Clara Redevelopment Agency ("RDA"), the Santa Clara Housing Authority ("Housing Authority"), the Santa Clara Stadium Authority ("SCSA") and the City of Santa Clara ("City") appreciates and welcomes the opportunity to comment on and provide corrections to the revised Finding No. 1 in the Draft Santa Clara Redevelopment Agency Asset Transfer Review Report (January 1, 2011 Through January 31, 2012), dated April 2013 sent to the City on August 8, 2013. (See Attachment 1) These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with ABx1 26, AB 1484 and other applicable law.

The response provided herein does not waive the right of the Successor Agency, the Housing Authority, the SCSA and the City to later provide additional information or statements as part of the review process. The Successor Agency, the Housing Authority, the SCSA and the City retain the right to raise new materials or positions as required.

GENERAL RESPONSE

1. The City's, the Housing Authority's, the SCSA's and the Successor Agency's review of the State Controller revised finding is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the City's, the Housing Authority's, the SCSA's, and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding.

2. By making the accompanying responses and objections, the City, the Housing Authority, the SCSA, and the Successor Agency do not waive, and hereby expressly reserve, their right to assert any and all objections as to the State Controller findings and statements in this review, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City and the Successor Agency make the responses herein without in any way implying that they consider all of the State Controller findings and statements, to be legally valid or

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within the scope of AB x1 26 relevant or material to the subject matter of this action.

3. The City, the Housing Authority, the SCSA and the Successor Agency reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information, in one or more subsequent supplemental response(s).

SPECIFIC RESPONSE

1. Finding 1- Unallowable property transfers to the City of Santa Clara

The Report orders the return of certain land and lease revenues transferred to the City. The real property included in this order includes the following properties[1]:

Conference Center Property	$4,730,000
North/South Parcels	$3,185,000
Theme Park Land	$73,532,992
Southern Pacific	$1,479,897
4949 Great America	$8,860,000
Martinson Day Care	$1,444,598
SCGCA Property	(the value of the SCGCA property is not listed)

The revisions to Finding 1 do not revise the Controller's order to return these properties to the Successor Agency and the Successor Agency renews its prior objections to these findings as set forth fully in the attached letter dated April 12, 2013. The revisions to Finding No. 1 appear to be two fold. First, the Controller orders the City to return to the Successor Agency lease payments from the above properties collected after December 31, 2010 rather than after February 1, 2012 as in the previous draft report. Secondly, the order removes language included in the prior draft directing the Successor Agency, with the approval of the Oversight Board, to determine whether to continue the agreements affecting the assets and leases that were in place on January 31, 2012 or to enter into new agreements in accordance with Health and Safety Code Section 34180(h) and directing the Successor Agency to use the ROPS process to seek approval of the Oversight Board and the DOF to transfer the lease payments to the City after January 1, 2012.

The revisions to the Controller's order in Finding No. 1 are based on a narrow reading of AB x1 26 and AB 1484 (the "Dissolution Act") and fail to take into account several sections of the Dissolution Act that are applicable to the lease payments and also fail to

[1] It should be noted that the value of the assets ordered to be returned listed in the former RDA's books is based on various valuation methods and in some instances, such as the Theme Park Land, incorrectly includes the value of the improvements on the property which are not owned by the former RDA but by the private third party lessee.

consider the language of Health and Safety Code Section 34167.5 itself. Additionally, the finding is contradictory to other orders issued by the Controller.

Section 34167.5 states that the Controller is to review the activities of redevelopment agencies to determine whether an asset transfer occurred after January 1, 2011 between the city or county that created the redevelopment agency or any other public agency and the redevelopment agency. If such an asset transfer did occur and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets, to the extent not prohibited by state or federal law, the Controller shall order the available assets to be returned to the redevelopment agency or successor agency, as applicable. The order fails to consider several portions of Section 34167.5 including whether the assets are contractually committed to third parties, whether state law prohibits the return of the assets and whether the assets are "available" as required by the statutory language.

As has been noted previously in the City's responses to the Controller's report, the lease payments from the properties have, in accordance with written agreements entered into between the City and the Agency long before the Dissolution Act was enacted, and indeed long before the Governor announced any intention to dissolve redevelopment agencies, been paid by the former Redevelopment Agency to the City. The lease payments with respect to most of the properties were paid to the City as compensation to the City for the conveyance of the properties to the former Redevelopment Agency. The City has annually set its City budget in reliance on these lease payments, and has entered into contracts with its employee unions and suppliers for goods and services in reliance on these lease payments. The lease payments that were received between January 1, 2011 and February 1, 2012 were properly treated as General Fund revenues and as part of the City's budget were committed to third parties and more importantly have been expended for the budgeted purposes. Section 34167.5 does not allow the Controller to order the return of assets that are committed to third parties and only allows for the return of assets that are "available". The lease payments that are ordered to be returned are not available because they have been committed and spent on third party expenditures.

Section 34167.5 also does not allow the Controller to order the return of assets where such return is prohibited by state or federal law. The Controller's order fails to take into account several statutes that are relevant to the lease payments. As was noted in the City's earlier response, all of the properties listed above, except the Theme Park, were originally acquired by the City and transferred to the RDA pursuant to Health and Safety Code Section 33396 which continues to remain in full force and effect. Health and Safety Code Section 33396 allowed a redevelopment agency to acquire property from a public entity if requested to do so by the legislative body that created the redevelopment agency. Pursuant to Section 33396, at the discretion of the legislative body, all of the lease or sales proceeds from the property could be paid to the community or the public entity from which the property was acquired. It is important to note that this section makes clear that the discretionary actions regarding the transfer of the property and the determination that the lease revenues be paid to the community are to be taken by the

City Council, not the Redevelopment Agency Board. This section expresses a clear legislative intent to allow cities to use their redevelopment agencies as conduits for the transfer of property to private parties while preserving the benefits of that transfer to the city, effectively creating a trust relationship between the city and the redevelopment agency, whereby the redevelopment agency held the property in trust for the benefit of the city. The Cooperation Agreements entered into between the City and the former RDA amplified the intent of the Section 33396 by stating explicitly that the lease revenues paid to the City pursuant to the agreements were to be treated as General Fund revenues of the City and could be used for general municipal purposes. Many of these agreements have been in place for over 25 years. Nothing in the Dissolution Act repeals or nullifies Section 33396.

The Controller's order also fails to consider other provisions of the Dissolution Act that directly contradict the order, including Section 34167(d) which provides the relevant definition of an enforceable obligation to be applied from the time that redevelopment agencies were suspended (June 28, 2011) through dissolution. This definition differs from the definition of an enforceable obligation after dissolution of the redevelopment agency contained in Section 34171(d). Section 34171(d) specifically excludes from the definition of enforceable obligations agreements between the former redevelopment agency and the city or county that created the redevelopment agency. The fact that this language is not included in the definition applicable during suspension indicates a clear legislative intent to allow the continued enforceability and performance of contracts between the former Redevelopment Agency and the City during the suspension period. The Cooperation Agreements and conveyance agreements entered into by and between the City and the former Redevelopment Agency long before January 1, 2011 qualify as enforceable obligations under Section 34167(d) and were fully enforceable under that definition until February 1, 2012.[2] The Controller's finding would read Section 34167(d) in a vacuum as if it were not part of a larger legislative framework relating to the dissolution of redevelopment agencies. To do so ignores clear legislative intent and violates the basic tenants of statutory construction. In fact, complying with the Controller's order would require the violation of other portions of the Dissolution Act that required the former Redevelopment Agency to "continue to make all scheduled payments for enforceable obligations" (Section 34169(a)). Section 34167(f) also makes clear that nothing in Part 1.8 of the Dissolution Act, which also contains Section 34167.5, shall be construed to interfere with a redevelopment agency's authority pursuant to enforceable obligations to make payments due and to perform its obligations.

The purpose of the Dissolution Act is to provide the taxing entities with the property taxes that were otherwise diverted to redevelopment agencies as tax increment. It was not to provide the taxing entities with a windfall gain obtained from the prudent investment by the City of General Fund resources in a manner designed to provide ongoing revenues to the City's General Fund. The Controller's order regarding the lease payments will result in a gift of public funds to the taxing entities. With limited

[2] The City contends that the Cooperation Agreements remain fully enforceable to this day as discussed more fully in earlier submissions to the Controller.

exception, the taxing entities did not make any investments in these properties and did not forego any funds as a result of the former Redevelopment Agency's agreement to pay to the City the lease payments. Rather the City is essentially being ordered to forfeit its assets, the land it legally acquired, without compensation since the Controller's order would impair the City's compensation agreement entered into with the Redevelopment Agency regarding the conveyance of the property. The arrangements between the City and the former Redevelopment Agency constitute an implied trust whereby the former Redevelopment Agency held title to property for the benefit of the City with all revenues from that property being passed on to the City as the beneficiary of the trust. The City had every expectation that it would derive the full benefit from the property by way of the Cooperation Agreements entered into between the former Redevelopment Agency and the City, with the expectation that upon dissolution of the former redevelopment agency, the property would revert to the City. The Controller's order would result in an unjust enrichment of the taxing entities to the detriment of the City, which under the laws of constructive trust is entitled to the property and the revenues from the property.

Requiring the City to return the lease payments would also result in a violation of the State Constitution. Under Section 25.5(a)(3) of Article XIII of the California Constitution, the Legislature is prohibited from enacting any statute to change for any fiscal year the pro rata shares in which ad valorem property tax revenues are allocated among local agencies in a county other than pursuant to a bill passed in each house of the Legislature by roll call vote entered in the journal, two-thirds of the membership concurring. An unwinding of the March 2011 conveyance in conjunction with the application of the provisions of the Dissolution Act that nullifies agreements between the City and the former RDA effective February 1, 2012 would result in a violation of Section 25.5(a)(3) of Article XIII of the California Constitution because it would result in an illegal windfall to other taxing agencies to the detriment of the City and the City's General Fund.

The City acquired the Properties[3] in the 1960s to the 1980s with General Fund tax and utility revenues. The City subsequently transferred the Properties to the RDA in exchange for a revenue stream of ground lease payments in lieu of up-front payment for the properties. None of the taxing entities collecting ad valorem property taxes had any claim to the revenues generated by the leases. The City has always and continues to utilize the lease payments it receives to fund core government services. An order to return the lease payments to the Successor Agency could result in a reallocation of substantial amounts in property tax revenues from the City to other taxing entities by arbitrarily invalidating the various contracts entered into between the RDA and the City in the 1980s (decades before the Governor proposed the dissolution of redevelopment agencies), resulting in an illegal redistribution of ad valorem property taxes because AB x1 26 was not passed by roll call vote entered in the journal with at least two-thirds of the members concurring.

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[3] All but the Theme Park property was originally acquired by the City. The Theme Park Property was acquired by the former Redevelopment Agency using revenue bonds repaid from theme park operating and lease revenues, not tax increment.

Conclusion

For these reasons, we respectfully request that the Office of the State Controller revise Finding No. 1 for the wind down of the former Santa Clara Redevelopment Agency.

Sincerely,

JULIO J. FUENTES
City Manager

cc: Mayor and City Council, City of Santa Clara
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