



BETTY T. YEE California State Controller

October 28, 2016

Jeff Muir, Chief Financial Officer
City of Culver City
9770 Culver Boulevard
Culver City, CA 90237

Dear Mr. Muir:

This letter is issued as an addendum to the State Controller's Office (SCO) Culver City Redevelopment Agency (RDA) Asset Transfer Review Reissued Report dated on October 16, 2015, hereby amending the Order of the Controller for Finding 2.

In that report, we stated: "Pursuant to [Health and Safety] H&S Code section 34167.5, the City of Culver City is ordered to reverse the transfer of assets in the amount of \$17,661,704 and turn the assets over to the Successor Agency."

The amount of \$17,661,407 did not include the \$12,500,000 loan principal payment to the City. Although the loan principal payment is stated as a finding, the SCO initially regarded the repayment as a negating transaction to the loan itself, netting an unallowable asset transfer of \$7,917, which represents the interest payment on the loan. However, according to the Sacramento Superior Court's decision in the case of *City of Culver City et al. v. Ana Matosantos, et al.*, case no. 34-2013-80001446 (2013), the Superior Court found that the City loan and the former RDA repayment thereof was unauthorized, in violation of Health and Safety Code sections 34162 and 34163 and ruled in favor of the defendants. The matter was not appealed and is considered final. Therefore, consistent with the Court's determination, the loan principal and the interest should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d). Consequently, as indicated above, the SCO hereby amends its Order of the Controller consistent with the decision of the Superior Court with regard to the disposition of the loan principal and interest.

Accordingly, the Order of Controller for Finding 2 shall read as follows: "Pursuant to H&S Code section 34167.5, the City of Culver City is ordered to reverse the transfer of assets in the amount of \$30,161,704 and turn the assets over to the Successor Agency."

Jeff Muir, Chief Financial Officer

October 28, 2016

Page 2

If you have any questions, please contact Elizabeth Gonzalez, Bureau Chief, Compliance Audits Bureau, by phone at (916) 324-0622.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA

Chief, Division of Audits

JVB/lr

17567

cc: Andrew Weissman, Oversight Board Chair

Culver City Redevelopment/Successor Agency

John Naimo, Auditor-Controller

Los Angeles County

David Botelho, Program Budget Manager

California Department of Finance

Richard J. Chivaro, Chief Legal Counsel

State Controller's Office

Elizabeth González, Bureau Chief

Division of Audits, State Controller's Office

Scott Freesmeier, Audit Manager

Division of Audits, State Controller's Office

CULVER CITY REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Reissued Review Report

January 1, 2011, through January 31, 2012



BETTY T. YEE
California State Controller

October 2015



BETTY T. YEE California State Controller

October 16, 2015

Jeff Muir, Chief Financial Officer
City of Culver City
9770 Culver Boulevard
Culver City, CA 90237

Dear Mr. Muir:

This report is a reissue of the original review report issued June 30, 2015. This reissued report is intended to clarify and provide detail to Finding 2 concerning the repayment of a short-term loan from the City of Culver City (City) used to make bond payments. The revision has no impact on the review findings.

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Culver City Redevelopment Agency (RDA) to the City 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 the asset should be turned over to the 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 to the City or any other public agency have been reversed.

Our review found that the RDA transferred \$200,829,675 in assets after January 1, 2011, including unallowable transfers to the City totaling \$161,176,560, or 80.26% of the transferred assets.

However, the following corrective actions have been taken:

- On various dates in 2012 and 2013, the City turned over \$55,142,274 in assets to the Successor Agency.
- On various dates in 2012 and 2013, the City turned over \$6,110,886 in assets to the Housing Successor.

- On March 1, 2012, the City sold two properties with a combined book value of \$4,733,174 for \$3,401,393. On July 25, 2012, the City turned over the cash proceeds to the Housing Successor.
- As of December 3, 2013, the City expended \$25,875,382 in unrestricted cash on third-party obligations.
- On December 5, 2013, the City remitted \$2,724,618 in cash to the Los Angeles County Auditor-Controller.
- As of March 26, 2015, the City expended \$20,063,438 in bond proceeds in accordance with the bond covenants.

Therefore, the remaining \$46,526,788 in unallowable transfers must be turned over to the Successor Agency.

If you have any questions, please contact Elizabeth González, Chief, Local Government Compliance Bureau, by telephone at (916) 324-0622, or by email at egonzalez@sco.ca.gov.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/lS

Attachment

cc: Andrew Weissman, Oversight Board Chair
Culver City Redevelopment/Successor Agency
Jeff Muir, Chief Financial Officer
City of Culver City
John Naimo, Auditor-Controller
Los Angeles County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Scott Freesmeier, Audit Manager
Division of Audits, State Controller's Office
Ernesto Pangilinan, Auditor-in-Charge
Division of Audits, State Controller's Office
Kandy Liu, Auditor
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Culver City Redevelopment Agency (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 rights to payments of any kind from any source.

Our review found that the RDA transferred \$200,829,675 in assets after January 1, 2011, including unallowable transfers to the City of Culver City (City) totaling \$161,176,560, or 80.26% of the transferred assets.

However, the following corrective actions have been taken:

- On various dates in 2012 and 2013, the City turned over \$55,142,274 in assets to the Successor Agency.
- On various dates in 2012 and 2013, the City turned over \$6,110,886 in assets to the Housing Successor.
- On March 1, 2012, the City sold two properties with a combined book value of \$4,733,174 for \$3,401,393. On July 25, 2012, the City turned over the cash proceeds to the Housing Successor.
- As of December 3, 2013, the City expended \$25,875,382 in unrestricted cash on third-party obligations.
- On December 5, 2013, the City remitted \$2,724,618 in cash to the Los Angeles County Auditor-Controller.
- As of March 26, 2015, the City expended \$20,063,438 in bond proceeds in accordance with the bond covenants.

Therefore, the remaining \$46,526,788 in unallowable transfers 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 and oversight boards 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 (H&S) Code beginning with section 34161.

H&S Code section 34167.5 states in part, “ . . . the Controller shall review the activities of redevelopment agencies in the state 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.”

The SCO identified asset transfers that occurred after January 1, 2011, between the RDA, the City and/or any other public agency. 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 action 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’s operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the City, the RDA, the Successor Agency, and the Oversight Board.
- 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 Culver City Redevelopment Agency transferred \$200,829,675 in assets after January 1, 2011, including unallowable transfers to the City of Culver City (City) totaling \$161,176,560, or 80.26% of the transferred assets.

However, the following corrective actions have been taken:

- On various dates in 2012 and 2013, the City turned over \$55,142,274 in assets to the Successor Agency.
- On various dates in 2012 and 2013, the City turned over \$6,110,886 in assets to the Housing Successor.

- On March 1, 2012, the City sold two properties with a combined book value of \$4,733,174 for \$3,401,393. On July 25, 2012, the City turned over the cash proceeds to the Housing Successor.
- As of December 3, 2013, the City expended \$25,875,382 in unrestricted cash on third-party obligations.
- On December 5, 2013, the City remitted \$2,724,618 in cash to the Los Angeles County Auditor-Controller.
- As of March 26, 2015, the City expended \$20,063,438 in bond proceeds in accordance with the bond covenants.

Therefore, the remaining \$46,526,788 in unallowable transfers must be turned over to the Successor Agency.

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

Views of Responsible Officials

We issued a draft review report on January 28, 2015. Jeff Muir, Chief Financial Officer, responded by letter dated February 17, 2015, disagreeing with the review results. The City's response is included in this final review report as an attachment.

Reason for Reissuance

This report is a reissue of the original review report issued June 30, 2015. The reissued report is intended to clarify and provide detail to Finding 2 concerning the repayment of a short-term loan from the City used to make bond payments. The revision has no impact on the review findings.

Restricted Use

This report is solely for the information and use of the City of Culver City, the Successor Agency, the 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 final.

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

October 16, 2015

Revised Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Culver City per the Cooperation Agreement

The Culver City Redevelopment Agency (RDA) made unallowable asset transfers of \$143,514,856 to the City of Culver City (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

On March 7, 2011, the RDA transferred \$143,514,856 in assets to the City per the Cooperation Agreement entered into between the RDA and City on January 15, 2011. The transfer consisted of the following asset types:

- Unrestricted Cash – \$28,600,000
- Bond Proceeds – \$46,751,836
- Land held for resale – \$40,903,650
- Capital Assets – \$23,934,081
- Loan Receivable – \$3,325,289

Pursuant to Health and Safety (H&S) Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Culver City (City) is ordered to reverse the transfers to the Successor Agency in the amount of \$143,514,856 and turn over the assets to the Successor Agency.

However, on various dates in 2012 and 2013, the City turned over \$55,142,274 and \$6,110,886 in assets to the Successor Agency and Housing Successor, respectively. Also, on March 1, 2012, the City sold two properties with a combined book value of \$4,733,174 for \$3,401,393. The City turned over the cash proceeds to the Housing Successor on July 25, 2012. In addition, as of December 3, 2013, the City expended \$25,875,382 in unrestricted cash on third-party obligations. Also, on December 5, 2013, the City remitted \$2,724,618 in cash to the Los Angeles County Auditor-Controller. Furthermore, as of March 26, 2015, the City expended \$20,063,438 in bond proceeds in accordance with the bond covenants.

Therefore, the remaining \$28,865,084 in unallowable transfers (\$26,688,398 in bond proceeds and \$2,176,686 in loan receivables) must be turned over to the Successor Agency.

City's Response

The City objects to Finding 1 (Cooperation Agreement) and the related Order on the following basis:

- I. Inaccuracies - The Report combines transaction for five (5) different asset classes to reach a single alleged unallowable transfer amount. This combination of transactions is confusing and has resulted in inaccuracies in the calculations.
 1. Unrestricted cash transfers shows a \$0 balance of unallowable transfers
 2. Land held for resale shows a \$0 balance of unallowable transfers
 3. Capital assets shows a \$0 balance of unallowable transfers
 4. Loan receivables will show a \$0 balance of unallowable transfers
 5. Bond proceeds should show a \$0 balance of unallowable transfers
- II. Under Applicable Law, the January 15, 2011 Cooperation Agreement, as approved and amended prior to AB 26, is a valid third-party commitment and enforceable obligation agreement.

See Attachment for the City's complete response.

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after January 1, 2011, 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.

The City interprets that the net effect of the actions it took in 2012 and 2013, as described in Schedule 1, amended the unallowable transfer amount for Unrestricted Cash, Land Held for Resale, and Capital Assets to \$0. However, the transfers are considered a finding, as the assets were transferred to another public agency during the review period. The transfer of the assets to the appropriate parties after the dissolution of the RDA is considered corrective action.

Additionally, the City stated that, “Bond Proceeds Should Show \$0 Balance of Unallowable Transfers.” The City also stated that out of \$46,751,836 in bond proceeds transferred, \$19,575,150 have been expended for obligations to third parties. On March 26, 2015, the City provided documentation for expenditures totaling \$20,063,438, which is more than the stated amount in its response. The remaining amount of bond proceeds ordered back to the Successor Agency is \$26,688,398.

The Finding and Order of the Controller has been modified accordingly.

**REVISED
FINDING 2—
Unallowable asset
transfers to the
City of Culver City**

The RDA made unallowable asset transfers of \$17,661,704 to the City. The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On February 28, 2011, and March 11, 2011, the RDA transferred \$121,830 and \$3,531,957 in cash, respectively, to the City for principal and interest payments related to the 2007 loan between the RDA and the City.
- On March 10, 2011, the RDA transferred \$14,000,000 to the City in exchange for the Cardiff Parking Lot. The RDA then conveyed the Cardiff Parking Lot to the Culver City Parking Authority, a component unit of the City, on March 16, 2011.
- On December 29, 2011, the RDA transferred \$12,500,000 to the City as repayment of a short-term loan. On December 31, 2011, the RDA transferred \$7,917 to the City for an interest payment on the short-term loan. According to the City Council meeting minutes and an agenda item report on October 24, 2011, the principal loan amount of \$12,500,000 was to be used to make RDA bond payments in October and November 2011. The loan was to be repaid by December 29, 2011, and had an interest rate equal to the Local Agency Investment Fund. Because the short-term loan and the subsequent repayment occurred within the same fiscal period, the net effect to the RDA’s funds is the loan interest payment of \$7,917.

Pursuant to H&S Code section 34167.5, the RDA may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. The assets must be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177(d).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City of Culver City is ordered to reverse the transfer of assets in the amount of \$17,661,704 and turn the assets over to the Successor Agency.

City's Response

The City objects to Finding 2 and the related Order on the following bases:

1. The 2007 RDA/City Loan was necessary to preserve the tax-exempt status of a related bond issue and to assist the RDA in carrying out its obligations under a pre AB 26 enforceable obligation with the local transit authority to bring about a transit-oriented development
2. The 2007 RDA/City Loan itself is a pre-AB 26 third-party commitment and enforceable obligation
3. The RDA's conveyance of the Cardiff Parking Facility to the City was required to satisfy the RDA's obligations to expend bond covenants and perform its obligations under a pre-AB 26 third-party commitment and enforceable obligation"

See Attachment for the City's complete response.

SCO's Comment

The 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.

The Successor Agency received a Finding of Completion from the Department of Finance on December 5, 2013. Pursuant to H&S Code section 34191.4, the Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule as an enforceable obligation, provided that the Oversight Board finds that the loans were for legitimate redevelopment purposes.

The Finding and Order of the Controller remain as stated.

Schedule 1—
Unallowable Asset Transfers to
the City of Culver City per Cooperation Agreement
January 1, 2011, through January 31, 2012

Cash		
March 7, 2011	Unrestricted cash	\$ 28,600,000
Bond Proceeds		
March 7, 2011	Bond proceeds	46,751,836
Land held For resale		
March 7, 2011	Land held for resale	40,903,650
Capital assets		
March 7, 2011	Buildings	14,962,810
March 7, 2011	Land	8,963,771
March 7, 2011	Infrastructure	<u>7,500</u> 23,934,081
Loan Receivables		
March 7, 2011	Loan receivables	<u>3,325,289</u>
Total unallowable transfers		<u>143,514,856</u>
Less:		
Cash		
December 3, 2013	Expended on third-party obligations as of December 3, 2013	(25,875,382)
December 5, 2013	Remitted to the Los Angeles County Auditor-Controller	<u>(2,724,618)</u> (28,600,000)
Bond proceeds		
March 26, 2015	Expended on third-party obligations as of March 26, 2015	(20,063,438)
Land held For resale		
March 1, 2012	11054/11056 Washington sold to a third party for \$3,401,393 in cash pr and a \$1,331,781 loss on the sale	(4,733,174)
July 24, 2012	Turned over to the Successor Agency	(32,355,842)
July 24, 2012	Turned over to the Housing Successor	<u>(3,814,634)</u> (40,903,650)
Capital assets		
June 3, 2013	Turned over to the Successor Agency	(22,786,432)
August 21, 2012	Turned over to the Housing Successor	<u>(1,147,649)</u> (23,934,081)
Loan receivables		
July 24, 2012	Turned over to the Housing Successor	<u>(1,148,603)</u>
Total unallowable transfers subject to H&S code section 34167.5		<u>\$ 28,865,084</u>

**Schedule 2—
Unallowable Asset Transfers to
the City of Culver City
January 1, 2011, through January 31, 2012**

Cash

March 10, 2011	Cardiff Parking Lot/Structure	\$ 14,000,000
March 11, 2011	2007 City Loan Principal Payment	3,531,957
February 28, 2011	2007 City Loan Interest Payment	121,830
December 31, 2011	2011 Short-term Advance Interest	7,917
		<hr/>
	Total transfers subject to H&S Code section 34167.5	\$ <u>17,661,704</u>

Attachment—
City of Culver City's Response to
Draft Review Report



FINANCE DEPARTMENT

CITY OF CULVER CITY

(310) 253-5865

FAX (310) 253-5880

9770 CULVER BOULEVARD, CULVER CITY, CALIFORNIA 90232-0507

JEFF S. MUIR
Chief Financial Officer

February 17, 2015

Via E-mail and Overnight Delivery

Elizabeth Gonzalez, Chief, Local Government Compliance Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, California 94250-5874

**Re: Culver City Redevelopment Agency
Draft Asset Transfer Review Report dated January 28, 2015 ("Report")**

Dear Ms. Gonzalez:

This is the response of the City of Culver City ("City") and the Successor Agency to the Culver City Redevelopment Agency ("Successor Agency") to the Report, which was received by the City on February 5, 2015. On February 5, 2015 your office confirmed that the due date for these comments is February 17, 2015.

Both the City and the Successor Agency appreciate and thank you for the opportunity to comment and respond to the Report.

The City and the Successor Agency reviewed the Report, including the conclusions, findings and orders. The City has comments and objections concerning the accuracy and conclusions of both Finding No. 1 on Page 4 of the Report (relating to the Cooperation Agreement) and Finding No 2 on Page 5 of the Report (relating to certain other transactions).

The City contends that all assets of the Culver City Redevelopment Agency ("RDA") have been lawfully handled and the payments and transactions made to the City identified by the State Controller as "unallowable asset transfers" were payments and transactions permitted under applicable law, including without limitation the California Health and Safety Code ("HSC"), as such law existed when the identified assets were paid or transferred to the City. Notwithstanding the foregoing, the City has taken certain measures, identified as "corrective actions" on Page 1 of the Report, which you have credited against any amounts your office otherwise may have ordered transferred to the Successor Agency, and the City will detail certain additional such actions in the comments and response below which should be credited in like manner.

Culver City Employees take pride in effectively providing the highest levels of service to enrich the quality of life for the community by building on our tradition of more than seventy-five years of public service, by our present commitment, and by our dedication to meet the challenges of the future.

PRINTED ON RECYCLED PAPER

Elizabeth Gonzalez, Chief, Local Government Compliance Bureau
State Controller's Office
February 17, 2015
Page 2

The City objects to Finding 1 (Cooperation Agreement) and the related Order on the following bases:

I. Inaccuracies

The Report combines transactions for five (5) different asset classes to reach a single alleged unallowable transfer amount. This combination of transactions is confusing and has resulted in inaccuracies in the calculations.

The five asset classes, consistent with those referred to in the Report, are:

1. Unrestricted Cash
2. Land Held for Resale
3. Capital Assets
4. Loan Receivables
5. Bond Proceeds

1. Unrestricted Cash Transfers Show \$0 Balance of Unallowable Transfers

The Report notes a \$28,600,000 transfer on March 7, 2011 of Unrestricted Cash but incorrectly ascribes expenditures of \$25,875,382 on third party obligations as related to bond proceeds expenditures instead of unrestricted cash expenditures. As previously documented to you during the audit process, and as found by the Department of Finance in its Due Diligence Reviews, such expenditures were actually made from unrestricted cash and not bond proceeds.

The City agrees with the Report's reference to \$2,724,618 as cash remitted by the City on December 5, 2013 to the Los Angeles County Auditor-Controller.

Thus, the \$28,600,000 transfer was completely negated by the \$25,875,382 in expenditures on third party obligations and the \$2,724,618 remittance. Both your office and the Department of Finance have approved the amount noted for expenditures on third party obligations.

2. Land Held for Resale Shows \$0 Balance of Unallowable Transfers

Although not clear given the Report's single presentation of multiple asset class transactions, this asset class also has no balance due for unallowable transfers. This is true using the numbers we have documented to your office and which were used in your Report.

Land held for resale totaling \$40,903,650 was transferred on June 30, 2011. However, as the Report notes in each instance, this was entirely balanced out by \$32,355,842 of land transferred to the Successor Agency on July 24, 2012, \$3,814,634 of

Elizabeth Gonzalez, Chief, Local Government Compliance Bureau
State Controller's Office
February 17, 2015
Page 3

land transferred to the Housing Successor on the same date, and by \$3,401,393 in cash proceeds from land sold to a third party on March 1, 2012, with a \$1,331,781 loss.

3. Capital Assets Shows \$0 Balance of Unallowable Transfers

Similarly, capital assets (buildings, land and infrastructure) totaling \$23,934,081 was transferred on March 7, 2011. However, as the Report notes in each instance, this was entirely balanced out by \$22,786,432 of capital assets transferred to the Successor Agency on June 3, 2013, and \$1,147,649 of capital assets transferred to the Housing Successor on August 21, 2012.

4. Loan Receivables Will Show \$0 Balance of Unallowable Transfers

In the case of Loan Receivables, \$3,325,289 was transferred on March 7, 2011, of which \$1,147,649 was transferred to the Housing Successor on July 24, 2012. The remaining balance of \$2,176,686 will be dealt with in an Additional Action of the City:

ADDITIONAL ACTION OF THE CITY: Additional Loan Receivables will be transferred to the Successor Agency in an amount not to exceed \$2,176,686.

5. Bond Proceeds Should Show \$0 Balance of Unallowable Transfers

In the case of Bond Proceeds, \$46,751,836 was transferred on March 7, 2011. This transfer will be balanced out by the following:

\$19,575,150 of the bond proceeds have been expended in accordance with bond covenants, pre-existing obligations to third parties and statutory requirements, including the mandate of Section 34177(i) discussed below, and other applicable law.

ADDITIONAL ACTION OF THE CITY: Unspent Bond Proceeds will be transferred to the Successor Agency in the amount of \$27,176,686, to be retained and expended by the Successor Agency in accordance with applicable law and the bond covenants.

With respect to the expended bond proceeds, none of the \$19,575,150 expenditures involved tax increments received by the former RDA which must be held by the Successor Agency for repayment of enforceable obligations or payment to the taxing entities under applicable provisions of AB 26.

Instead the former Agency was obligated by the bond covenants and applicable statute to expend these funds in a timely manner to carry out the redevelopment projects and to preserve the tax exempt status of the portion of the bonds issued on that basis.

Elizabeth Gonzalez, Chief, Local Government Compliance Bureau
State Controller's Office
February 17, 2015
Page 4

All of these expenditures were legitimate redevelopment projects which had been lawfully authorized and committed prior to AB 26.

If such funds had not been expended for such purposes the bond covenants mandating such expenditure in a timely manner would have been violated.

Also, AB 26 would have been violated. Specifically, Health & Safety Code Section 34177(i) mandates that:

"Bond proceeds shall be used for the purposes for which bonds were sold unless the purposes can no longer be achieved..."

Further, Section 34169(b) required the former RDA to "Perform obligations...aimed at preserving the tax-exempt status of interest payable on any outstanding redevelopment agency bonds." This included the timely expenditure of the bond proceeds on contracts approved to carry out the redevelopment projects.

II. Under Applicable Law The January 15, 2011 Cooperation Agreement, as approved and amended prior to AB 26 Is a Valid Third Party Commitment, Enforceable Obligation and Agreement.

In addition to the foregoing, the City bases its comments and objections to Finding 1 on the legal arguments set forth on Exhibit A hereto, which also demonstrate that the State Controller is without legal authority to order such funds returned to the Successor Agency.

The City objects to the Finding 2 and the related Order on the following bases:

1. The 2007 RDA/City Loan was necessary to preserve the tax-exempt status of a related bond issue and to assist the RDA in carrying out its obligations under a pre AB 26 enforceable obligation with the local transit authority to bring about a transit-oriented development

As quoted above, the former RDA was statutorily mandated pursuant to Section 34169(b) to "Perform obligations...aimed at preserving the tax-exempt status of interest payable on any outstanding redevelopment agency bonds."

To avoid the use of more tax-exempt bond proceeds than legally permitted to acquire land necessary for the Washington-National transit oriented development, the former RDA agreed to repay the City for advancing funds for a portion of such land acquisition costs. The property acquired is being used to satisfy the former RDA's

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obligations under a pre-AB 26 agreement with the local transit authority concerning the project.

2. The 2007 RDA/City Loan Itself Is a Pre AB 26 Third Party Commitment and Enforceable Obligation

The City incorporates its arguments about the legal validity of the Cooperation Agreement set forth in its response to Finding 1 and attached as Exhibit A hereto.

3. The RDA's conveyance of the Cardiff Parking Facility to the City was required to satisfy the RDA's obligations to expend bond covenants and perform its obligations under a pre-AB 26 third party commitment and enforceable obligation

The funds utilized by the RDA to acquire the Cardiff Parking Facility were bond proceeds, and were not tax increment funds required to be used by the Successor Agency to pay enforceable obligations or to be paid to the taxing agencies under AB 26. Instead, as documented above, the RDA was obligated by statute and bond covenants to expend these proceeds in a timely manner to carry out the redevelopment project and to satisfy such obligations.

Furthermore, the purpose of the conveyance to the City of the Cardiff Parking Facility was to satisfy RDA obligations to provide and maintain public parking under a pre-existing Parking Agreement between the RDA and a Downtown Culver City developer. Conveying the property to the City both satisfied these contractual obligations and pre-AB 26 third party commitments and also relieved the Successor Agency of any further liability or costs in maintaining the use and availability of such parking. The conveyance of other parking facilities from the Successor Agency to the City to satisfy in part the same pre-AB 26 third party commitment was approved for the same reasons by the Department of Finance in connection with its approval of the Successor Agency's Long Range Property Management Plan.

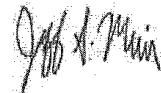
4. ADDITIONAL ACTION OF THE CITY: The City will pay to the Successor Agency the \$7,917 interest payment related to a short term advance from the City, as referred to in Finding 2 of the Report.

By making the accompanying objections and responses, the City and the Successor Agency do not waive, and hereby expressly reserve, their respective rights to assert any and all objections to the State Controller statements and findings in this review, or in any other proceedings, on any and all grounds including, without limitation, scope, jurisdiction, relevancy, competency, accuracy and materiality. In addition, the City and the Successor Agency make the responses herein without in any way implying that they each consider the State Controller's findings and statements to be

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within the scope of the Dissolution Act or legally valid, or material or relevant to the subject matter hereof.

Sincerely,



Jeff S. Muir
Chief Financial Officer

EXHIBIT A

LEGAL ARGUMENTS IN SUPPORT OF THE RESPONSE
TO THE DRAFT STATE CONTROLLER'S OFFICE REPORT

The Report was issued by the State Controller under HSC Section 34167.5 of Assembly Bill X1 26 (“**AB 26**”) as AB 26 has subsequently been amended (AB 26 as amended is referred to herein as the “**Dissolution Act**”). The Dissolution Act is separated into two primary parts, Part 1.8 and Part 1.85, which were both enacted concurrently by AB 26, yet became effective at different times and include different definitions of “Enforceable Obligation.”

Specifically, Part 1.8 of the Dissolution Act is set forth in HSC Sections 33500 through 34169.5, and became effective upon the enactment of AB 26 per HSC Section 34161 and applies to former redevelopment agencies per HSC Section 34167(b) in order to essentially freeze redevelopment activities. Part 1.85 of the Dissolution Act is set forth in HSC Sections 34170 through 34191.5, and became effective on February 1, 2012 per HSC Section 34170(a) and applies to successor agencies in order to provide for the wind down and dissolution of redevelopment.

Part 1.85 of the Dissolution Act, effective on February 1, 2012, purports to render RDA/City agreements void, yet Part 1.8 of the Dissolution Act does not void RDA/City agreements (See, Part 1.8’s definition of “Enforceable Obligation”). Because the date on which the questioned repayment was made (i.e. March 7, 2011) was at a time when Part 1.8 was applicable, but Part 1.85 was not yet in effect, the payment to the City was not an unallowable transfer of funds from the RDA to the City. Therefore, state law prohibits the State Controller from ordering the City’s return of such funds to the Successor Agency.

Pursuant to Part 1.8 at HSC Section 34167.5, the statute relied on by the State Controller for its Finding and Order set forth in the Report, the State Controller may order the return of available assets from the City to the RDA, or Successor Agency, “to the extent not prohibited by state or federal law.” Here, since the RDA’s repayment on the Cooperation Agreement was made in accordance with and pursuant to state law at the time the law existed during such repayment, and since the Cooperation Agreement is an “Enforceable Obligation” pursuant to HSC Section 34167(d) of Part 1.8 of the Dissolution Act, the State Controller is prohibited by state law from ordering the City to return the questioned funds to the Successor Agency. In this regard, the Cooperation Agreement and the RDA’s repayment obligations thereunder constitute “Enforceable Obligations” under Part 1.8 of the Dissolution Act, which is the part of AB 26 which is applicable to the RDA repayment to the City on March 7, 2011, pursuant to HSC Section 34167(d)(2) (*loans of moneys borrowed by the RDA for a lawful purpose to the extent they are legally required to be repaid pursuant to a repayment schedule or mandatory loan terms*), HSC Section 34167(d)(3) (*payments required by obligations imposed by state law*), HSC Section 34167(d)(5) (*any legally binding and enforceable agreement and contract that is not otherwise void as violating the debt limit or public policy*), and HSC Section 34167(d)(6) (*contracts or agreements necessary for the*

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continued administration or operation of the RDA). No provision in Part 1.8 of the Dissolution Act renders RDA/City agreements or this Cooperation Agreement void or unenforceable.

If the Legislature desired to void RDA/City agreements during the “freeze” period of Part 1.8 of the Dissolution Act, it would have added a provision similar to that of Part 1.85 of the Dissolution Act. Both Part 1.8 and Part 1.85, including each Part 1.8 and Part 1.85 respective different definitions of “Enforceable Obligations”, were enacted by the Legislature at the same time by the initial AB 26 in June 2011, yet Part 1.85 became effective later pursuant to HSC Section 34170(a) of AB 26 than Part 1.8 which became effective upon enactment of AB 26 pursuant to HSC Section 34161.

Further, Part 1.8 of the Dissolution Act at HSC Section 34167(f) specifically provides that “[n]othing in this part shall be construed to interfere with a redevelopment agency’s authority, **pursuant to enforceable obligations as defined in this chapter** [emphasis added], to (1) make payments due, (2) enforce existing covenants and obligations, and (3) perform its obligations.” Further, pursuant to Part 1.8 of the Dissolution Act at HSC Sections 34169(a), (b), (d), and (f), redevelopment agencies shall “[c]ontinue to make all scheduled payments for enforceable obligations”, “[p]erform obligations required pursuant to any enforceable obligations, including, but not limited to, observing covenants for continuing disclosure obligations and those aimed at preserving the tax-exempt status of interest payable on any outstanding agency bonds”, “minimize all liabilities”, and “[t]ake all reasonable measures to avoid triggering an event of default under any enforceable obligations.”

The Cooperation Agreement in question contains a specific schedule of repayments, and includes mandatory terms of the City loan and the RDA’s repayment obligation and thus was a lawful debt obligation and contract of the RDA.

Furthermore, this repayment was a regularly scheduled repayment in accordance with the schedule of payments attached to the Cooperation Agreement, not an early lump sum payment.

Also, this payment was listed on the relevant enforceable obligation payment schedule (“**EOPS**”) and draft recognized obligation payment schedule (“**ROPS**”) required to be prepared by the RDA under the Dissolution Act and was not objected to by the state. If the state disputed such repayment, it would have been timely and more appropriate to object to such repayment of funds back when the state had the opportunity to object. Thus, it is not timely for the state to only now raise its objection, find the transfer of funds as unallowable, and order the City to return such funds to the Successor Agency several years later after the money was repaid to the City by the Successor Agency’s predecessor and already spent by the City.

Lastly, the Cooperation Agreement was validated as a matter of law by the absence of any suit to challenge its validity within 60 days following its approval, pursuant to applicable provisions of Code of Civil Procedure Sections 860-870, inclusive.

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