LA QUINTA REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012

JOHN CHIANG
California State Controller

December 2013

JOHN CHIANG
California State Controller

December 6, 2013

Frank J. Spevacek, City Manager
La Quinta Redevelopment/Successor Agency
78495 Calle Tampico
La Quinta, CA 92247

Dear Mr. Spevacek:

Pursuant to Health and Safety (H&S) Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the La Quinta Redevelopment Agency to the City of La Quinta 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 La Quinta 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 La Quinta or any other public agencies have been reversed.

Our review found that the La Quinta Redevelopment Agency transferred $197,534,075 in assets to the City of La Quinta, the La Quinta Housing Authority, and the Successor Agency. These included unallowable transfers of assets totaling $98,061,463, or 49.64%, that should have been turned over to the Successor Agency. However, on April 18, 2012, the Successor Agency Oversight Board retroactively approved the transfer of $27,924,586 in housing properties and $1,260,115 in loans receivable to the Housing Authority. On March 13, 2013, the Oversight Board retroactively approved the sale of the Highway 111 Mazella and the Silver Rock properties; and on October 2, 2012, the City of La Quinta turned over $27,445,583 of public-use properties to the Successor Agency. Therefore, the remaining amount of unallowable transfers subject to H&S Code section 34167.5 is $41,431,179.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/vb

cc: Paul Angulo, Auditor-Controller
County of Riverside
Robbeyn Bird, Finance Director
La Quinta Redevelopment/Successor Agency
City of La Quinta
John Peña, Chair of the Oversight Board
La Quinta Redevelopment/Successor Agency
City of La Quinta
David Botelho, Program Budget Manager
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Nicole Baker, Auditor-in-Charge
Division of Audits, State Controller's Office

Contents

Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the La Quinta Redevelopment Agency 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 La Quinta Redevelopment Agency transferred $197,534,075 in assets to the City of La Quinta, the La Quinta Housing Authority, and the Successor Agency. These included unallowable transfers of assets totaling $98,061,463 or 49.64% that should have been turned over to the Successor Agency. However, on April 18, 2012, the Successor Agency Oversight Board retroactively approved the transfer of $27,924,586 in housing properties and $1,260,115 in loans receivable to the Housing Authority. On March 13, 2013, the Oversight Board retroactively approved the sale of the Highway 111 Mazella and the Silver Rock properties; and on October 2, 2012, the City of La Quinta turned over $27,445,583 of public-use properties to the Successor Agency. Therefore, the remaining amount of unallowable transfers subject to Health and Safety (H&S) Code section 34167.5 is $41,431,179.

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 (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 La Quinta Redevelopment Agency, the City of La Quinta, 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 La Quinta City Council and the La Quinta Redevelopment Agency.
- 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 La Quinta Redevelopment Agency transferred $197,534,075 in assets to the City of La Quinta, the La Quinta Housing Authority, and the Successor Agency. These included unallowable transfers of assets totaling $98,061,463, or 49.64%, that should have been turned over to the Successor Agency for disposition in accordance with H&S Code section 34167.5.

However, on April 18, 2012, the Successor Agency Oversight Board retroactively approved the transfer of $27,924,586 in housing properties and $1,260,115 in loans receivable to the Housing Authority. On March 13, 2013, the Oversight Board retroactively approved the sale of the Highway 111 Mazella and the Silver Rock properties; and on October 2, 2012, the City of La Quinta turned over $27,445,583 of public-use properties to the Successor Agency. Therefore, the remaining amount of unallowable transfers subject to H&S Code section 34167.5 is $41,431,179.

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

Views of Responsible Official

We issued a draft review report on April 15, 2013. M. Katherine Jenson, City Attorney, City of La Quinta, responded by letter dated April 26, 2013, disagreeing with the review results. The Successor Agency's response is included in this final review report as an attachment.

Restricted Use

This report is solely for the information and use of the City of La Quinta, Successor Agency to the La Quinta Redevelopment Agency, the Successor Agency Oversight Board, the La Quinta Housing Authority, 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

December 6, 2013

Findings and Orders of the Controller

FINDING 1—Unallowable asset transfers to the City of La Quinta

The La Quinta Redevelopment Agency (RDA) made unallowable asset transfers of $68,876,762 to the City of La Quinta (City). The asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets.

Unallowable asset transfers were as follows:

- On January 31, 2011, the RDA transferred a total of $281,377 in cash to the City for interest payment on the RDA loan.

- On February 15, 2011, the RDA transferred capital assets of $27,445,583 in public-use properties to the City. To accomplish the transfer, the City and the RDA entered into an agreement under Resolution No. RA 2011-006. However, on October 2, 2012, the City turned over $27,445,583 in public-use properties to the Successor Agency under Successor Agency Resolution No. SA 2012-011.

- On February 28, 2011, the RDA transferred a total of $268,582 in cash to the City for interest payment on the RDA loan.

- On February 28, 2011, the RDA transferred $35,593,468 in cash to the City for loan repayment. The transfer was approved by the members of the City Council and the RDA on the February 1, 2011 City Council agenda.

- On March 3, 2011, the RDA sold Highway 111 Mazella property to the City for $3,445,000 in cash. However, on March 13, 2013, the Oversight Board retroactively approved the sale of the property under Oversight Board Resolution No. OB 2013-004 (see Schedule 2).

- On March 3, 2011, the RDA transferred $5,287,752 in cash to the City for loan repayment. The transfer was retroactively approved by members of the City Council and the RDA at the March 15, 2011 City Council meeting.

- On April 30, 2011, the RDA sold Silver Rock property to the City for $4,875,000 in cash. However, on March 13, 2013, the Oversight Board retroactively approved the sale of the property under Oversight Board Resolution No. OB 2013-004 (see Schedule 2).

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

> The oversight board shall direct the successor agency to do all of the following:
>
> (a) Dispose of all assets and properties of the former redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value."

Order of the Controller

Based on H&S Code section 34167.5, the City of La Quinta is ordered to reverse the transfer of the above assets in the amount of $68,326,803; however, because the $27,445,583 in public-use properties were turned to the Successor Agency on October 2, 2012 (Resolution No. SA 2012-011) and the Oversight Board retroactively approved the sale of the Highway 111 Mazella and Silver Rock properties (Resolution No. OB 2013-004), only the remaining amount of $41,451,179 must be transferred to the Successor Agency (see Schedule 1).

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e), and 34181(a).

SCO's Comment Regarding Revised Finding 1

The City responded to an initial version of Finding 1 in a letter dated April 26, 2013 (Attachment 1). Subsequently, the SCO issued a revised Finding 1 on September 10, 2013, and the City responded to the revision with a letter dated September 19, 2013 (Attachment 3). The SCO's comments to the two responses are given below.

SCO's Comment Regarding Successor Agency's April 26, 2013 Response

Generally the initial version of the 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.

Successor Agency's Response to Draft Report

> The Draft Report identifies the RDA's total loan repayment amount as $40,881,220, which, for purposes of this response letter, has been designated the "Disputed Loan Repayment Amount." The City's and RDA's financial spreadsheets and records, however, reflect that the amount repaid by the RDA pursuant to the Loan Agreements was $41,378,966.

SCO's Comment

The State Controller's Office (SCO) disagrees with the Successor Agency's statement above. According to the March 15, 2011 City Council agenda, the difference between $41,378,966 and $40,881,220 is $497,746, which is the calculated interest expense on the outstanding loan for four months (February 28, 2011, through June 30, 2011). According to the general ledger detail transactions, the loan was repaid early. Since the loan was repaid prior to June 30, 2011 (on February 28, 2011 and March 3, 2011) the City did not receive interest payments totaling $497,746.

Successor Agency's Response to Draft Report

> The City, pursuant to the 1983 Agreement and through Loan Advances, authorized and loaned City general fund moneys for capital improvement projects and property acquisition to the RDA to provide "seed money" and funding in furtherance of implementing redevelopment programs and projects and as investments in the Redevelopment Project Area. . . .
>
> Under these laws, as of the date of the RDA's loan payoff in 2011, the City ultimately had a total of $41,378,966 outstanding on the Loan Advances. The terms and conditions in the 1983 Loan Agreement expressly provide that funds loaned from the City to the RDA are to be repaid. . . .
>
> At all times, the City and RDA honored the 1983 Loan Agreement, and terms pertaining to specific Loan Advances made under the authority of the 1983 Loan Agreement, as a legally valid and binding loan. Prior to the RDA's payment to the City of the Disputed Loan Repayment Amount, all Loan Advances made under the 1983 Loan Agreement had been at least partially – and in several cases fully – repaid. City and Successor Agency staff have prepared a summary of the repayment history of each of the Loan Advances made pursuant to the 1983 Loan Agreement (the **"Repayment Summary")**. The Repayment Summary is included as **Attachment 15** in this response Letter. . . .
>
> Similar terms and conditions are referred to in the Loan Advances entitling the City to full repayment of the amount loaned upon the RDA's ability to repay, with a pre-payment ability on the part of the RDA with no penalty. . . .
>
> On February 1, 2011, the RDA Board adopted a minute action, authorizing the Executive Director, on behalf of the RDA, to repay in whole or in part the outstanding balances owed under the 1983 Loan Agreement and implementing Loan Advances based on the availability of tax increment funds from the RDA. . . .

> Section 34167.5 was not intended to authorize the SCO to order the reversal of payments made by a redevelopment agency pursuant to enforceable obligations. Section 34167(f), which directly precedes section 34167.5, provides "Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations." . . .
>
> . . . the 1983 Loan Agreement and implementing Loan Advances are enforceable obligations under two paragraph of section 34171(d)(1). . .
>
> The 1983 Loan Agreement and implementing Loan Advances are also enforceable obligations under the "carve out" in section 34171(d)(2) of Part 1.85, in that the 1983 Loan Agreement was entered into within the first two years of the enabling of the RDA. . . .
>
> . . . the City and the La Quinta Successor Agency respectfully submit that the RDA's payment of the Disputed Loan Repayment Amount is not subject to reversal under the SCO asset transfer review process and that the SCO's order to transfer the amount of $40,881,220, as set forth in the Draft Report of April 15, 2013, must be omitted from the SCO's final report.

SCO's Comment

The SCO agrees with the statement made by the Successor Agency that the 1983 Cooperation Agreement, attached to the Successor Agency's response, was a legal, valid, and binding agreement between the City and the RDA. The 1983 Cooperation Agreement, created within the first two years of the date of the RDA's creation, could be considered an enforceable obligation subject to the approval of the Department of Finance (DOF). However, the 1983 Cooperation Agreement (Loan Agreement) did not establish any loan indebtedness to the RDA at the time. The Disputed Loan Repayment Amount of $40,881,220 was for advances, between the City and the RDA, over two years after the date the RDA was created. Therefore, the Disputed Loan Repayment Amount is not an enforceable obligation under H&S Code section 341717(d) (2) unless approved by DOF.

The SCO understands the difficult issues that the Successor Agencies are required to address due to the requirements of ABX1 26. Although ABX1 26 was signed into law on June 28, 2011, the bill states that the SCO shall order the return of any asset transferred after January 1, 2011, to the Successor Agency. The SCO agrees that loan agreements between the City and the RDA may become enforceable obligations if approved by the Oversight Board and the California Department of Finance (DOF); however, the Oversight Board and the DOF have not approved the repayment of the City loans. During the course of this review, the nature of the City loan repayments was unallowable. According to the FY 2009-10 RDA Financial Statement (page 36), and the Loan Repayment History (attachment #17 to Successor Agency's response), five different advance loans from the City are not scheduled to repay the loan principal until FY 2030-31, while the sixth advance loan does not have a repayment schedule. Therefore, the early loan repayment of

$40,881,220 in 2011 is an asset transferred subject to H&S Code section 34167.5. Therefore, the Finding remains as stated.

SCO's Comment Regarding Successor Agency's September 19, 2013 Response

Generally, the revised Finding 1 narrative and the SCO comments regarding selected issues raised by the City in its April 26, 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 the issues that require additional clarification.

Successor Agency's Response to Draft Report

> In Page 7 of the Statement of Decision, Judge Summer, citing Health and Safety Code sections 34171(d)(2) and 34167(f), acknowledges that any interest payments made by the RDA during 2011 would arguably constitute a payment due pursuant to an enforceable obligation, and thereby not subject to "claw-back" under the dissolution law.

SCO's Comment

The interest payment is a transfer of assets between the RDA and the City. Unless the transferred assets are contractually committed to a third party, the assets are a claw-back pursuant to Health and Safety Code section 34167.5.

The Finding and Order of the Controller remain as stated.

FINDING 2— Unallowable asset transfers to the La Quinta Housing Authority

As of January 31, 2012, the RDA transferred a total of $29,184,701 ($1,260,115 and $27,924,586 for loans receivable and housing property, respectively) in assets to the La Quinta Housing Authority. 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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code Section 34177(d) and (e).

Order of the Controller

Based on H&S Code sections 34167.5 and 34177(e), the City of La Quinta is ordered to reverse the transfer of the above assets in the amount of $29,184,701. However, on April 18, 2012, the Oversight Board retroactively approved the transfer of those assets to the Housing Authority under Oversight Board Resolution No. OB 2012-008. Therefore, no further action is needed.

Please note that the California Department of Finance (DOF) must approve the Oversight Board's decision in this matter. If the DOF does not approve the decision, then the Housing Authority is ordered to transfer the assets to the Successor Agency pursuant to the H&S Code section 34167.5.

Successor Agency's Response to Draft Report

The Successor Agency had no response.

SCO's Comment

The finding and Order of the Controller remain as stated.

Schedule 1—
Unallowable RDA Asset
Transfers to the City of La Quinta
January 1, 2011, through January 31, 2012

Current assets:	
Cash transfer to the City for loan interest payment (January 31, 2011)	$ 281,377
Cash transfer to the City (February 28, 2011)	35,593,468
Cash transfer to the City for loan interest payment (February 28, 2011)	268,582
Cash transfer to the City (March 3, 2011)	5,287,752
Capital assets:	
Public-use properties (February 15, 2011)	27,445,583
Total unallowable transfers to the City	68,876,762
City turned over public-use properties (October 2, 2012)	(27,445,583)
Total transfers subject to H&S Code section 34167.5	$ 41,431,179 [1]

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

Schedule 2—
Unallowable Sales of Properties to the City of La Quinta
January 1, 2011, through January 31, 2012

Highway 111 Mazella (March 3, 2011)	3,445,000
Silver Rock (April 30, 2011)	4,875,000
Total unallowable sales to the City	8,320,000
Received Oversight Board approval on March 13, 2013	(8,320,000)
Total transfers subject to H&S Code section 34167.5	$ — [1]

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

Attachment 1—
Successor Agency's Response to
Draft Review Report

RUTAN

RUTAN & TUCKER, LLP

M. Katherine Jenson
Direct Dial: (714) 641-3413
E-mail: kjenson@rutan.com

April 26, 2013

VIA E-MAIL, OVERNIGHT DELIVERY, AND U.S. CERTIFIED MAIL

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

Re: La Quinta Successor Agency's Response to SCO Letter Dated April 15, 2013, Received on April 19, 2013, Enclosing Draft Asset Transfer Review Report

Dear Mr. Mar:

I serve as City Attorney for the City of La Quinta ("**City**") and counsel to the City of La Quinta As Successor Agency to the Former La Quinta Redevelopment Agency ("**La Quinta Successor Agency**").

The City and Successor Agency are in receipt of Jeffrey V. Brownfield's letter dated April 15, 2013, sent by certified mail and postmarked April 17, 2013, and received (and signed for) by the City on April 19, 2013. Enclosed with Mr. Brownfield's letter was a draft Asset Transfer Review Report (the "**Draft Report**") of the review the State Controller's Office ("**SCO**") conducted pursuant to Health and Safety Code section 34167.5[1] of all asset transfers made by the former La Quinta Redevelopment Agency ("**RDA**") to the City or any other public agency after January 1, 2011.

The Draft Report, on page 4, lists as unallowable transfers the following:

- On February 28, 2011, the RDA transferred $35,593,468 in cash to the City for loan repayment. The transfer was approved by the members of the City Council and the RDA on the February 1, 2011 City Council agenda.

- On March 3, 2011, the RDA transferred $5,287,752 in cash to the City for loan repayment. The transfer was retroactively approved by members of the City Council and the RDA on the March 15, 2011 City Council agenda.

[1] Unless otherwise specified, all further section references are to the Health and Safety Code.

With respect to the foregoing transfers, page 5 of the Draft Report sets forth the following proposed Order of the Controller:

> Based on H&S Code Section 34167.5, the City of La Quinta would have been ordered to reverse the transfer of the above assets in the amount of $68,326,803; however, because the $27,445,583 in public-use properties were turned to the Successor Agency on October 2, 2012 (Resolution No. SA 2012-011) and the Oversight Board retroactively approved the sale of the Highway 111 Mazella and Silver Rock properties (Resolution No. OB 2013-004), only the remaining amount of $40,881,220 must be transferred to the Successor Agency (see Schedule 1).
>
> The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

On April 22, 2013, I had a telephone conference with SCO representatives Betty Moya, Nicole Baker, and Tuan Tran. In that telephone conference, Ms. Moya, Ms. Baker, and Mr. Tran ***confirmed that the only "assets"[2] at issue are the cash transfers by the RDA to the City for loan repayment (as listed on page 4 of the Draft Report and referred to on page 1 of this letter), in the collective amount of $40,881,220*** and that the direction to the La Quinta Successor Agency, set forth on page 5 of the Draft Report and quoted above—to "properly dispose of those assets"—refers to the loan repayments of $40,881,220 and does not refer to either the SilverRock or Mazella propertY. As a result of this confirmation received from Ms. Moya, Ms. Baker, and Mr. Tran, this response letter discusses only the loan repayments as that is the only issue raised by the Draft Report.

The La Quinta Successor Agency and the City disagree with and object to the SCO's preliminary determination that $40,881,220 (the "**Disputed Loan Repayment Amount**") in legal, valid loan repayments by the RDA to the City must be returned to the La Quinta Successor Agency, presumably for ultimate payment to the county auditor-controller and distribution to affected taxing agencies. This response letter provides relevant history and the La Quinta Successor Agency and City's justification as to why the proposed Order of the State Controller, as set forth above, must be omitted from the SCO's final report.

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[2] The City and La Quinta Successor Agency disagree with the SCO that the loan repayments at issue are RDA assets, and that the repayments are "asset transfers," for purposes of Section 34167.5.

A. BACKGROUND/HISTORY

1. Factual Background Regarding the La Quinta RDA and 1983 Loan Agreement.

Pursuant to Health and Safety Code sections 33100 and 33101, the RDA was "activated" and enabled to exercise powers under the California Community Redevelopment Law (§33000 *et seq.*) (the "**CRL**") on July 5, 1983, by City Council Ordinance No. 34. On August 16, 1983, the City and the RDA entered into an agreement, titled "Cooperation Agreement," which set forth various terms but primarily was a loan agreement providing for loan advances and a maximum interest rate of ten percent (10%) per annum (the "**1983 Loan Agreement**"). Pursuant to the 1983 Loan Agreement, the City provided a series of loan advances to the RDA (the "**Loan Advances**"). Copies of the 1983 Loan Agreement and the documentation evidencing the Loan Advances (collectively, the "**Loan Documentation**") are included as **Attachments 1 through 14** to this response letter.

The City, pursuant to the 1983 Agreement and through Loan Advances, authorized and loaned City general fund moneys for capital improvement projects and property acquisition to the RDA to provide "seed money" and funding in furtherance of implementing redevelopment programs and projects and as investments in the Redevelopment Project Area. As one example of a Loan Advance, the City made a loan advance of City general funds to the RDA funds so that the RDA could make the 2009/2010 SERAF payment. The 1983 Loan Agreement (and in accordance therewith, the Loan Advances) is the type of loan agreement that was not only expressly authorized but encouraged by California law, including Sections 33220, 33600, 33601 and 33610 and Government Code section 53600 *et seq.* Once the 1983 Loan Agreement was approved and entered into, the 1983 Loan Agreement (and thus each Loan Advance) was a valid, binding, executory contract that evidenced indebtedness of the RDA entitled to repayment with the RDA's tax increment under California law. (See, Cal. Const., art. XVI, § 16; §§ 33670, 33675 [tax increment provisions]; *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1087 ["We conclude that 'indebtedness,' as it is used in article XVI, section 16 and sections 33670 and 33675, includes redevelopment agencies' executory financial obligations under redevelopment contracts. Such indebtedness entitles those agencies to payment of available tax increment revenues by the local county auditor."].)

Applicable statutes and controlling case precedent require such contracts to be honored as indebtedness of the RDA with repayment from tax increment because the contracts were executed between two separate public agencies—even if the governing board of a redevelopment agency was the same as the host jurisdiction. (*Ibid.* See also, § 33100 [expressly allowing city council to serve as board of directors for redevelopment agency]; *Pacific States Enterprises v. City of Coachella* (1993) 13 Cal.App.4th 1414, 1424 ["Well-established and well-recognized case law holds that the mere fact that the same body of officers acts as the legislative body of two

different governmental entities does *not* mean that the two different governmental entities are, in actuality, one and the same."].)

Additionally, the CRL (Section 33445) expressly authorized the RDA to pay for real property and costs of publicly owned improvements, including those contracted for by the City. For publicly owned improvements funded under Section 33445, the legislative body's findings concerning the necessity of tax increment funding for the specified improvements were "final and conclusive" by law.

Under these laws, as of the date of the RDA's loan payoff in 2011, the City ultimately had a total of $41,378,966[3] outstanding on the Loan Advances. The terms and conditions in the 1983 Loan Agreement expressly provide that funds loaned from the City to the RDA are to be repaid. For instance, the 1983 Loan Agreement provides:

- "The City may . . . advance necessary funds to the [RDA] or may expend funds on behalf of the [RDA] for the . . .implementation of a redevelopment plan, including. . . the costs of acquisition of property within the project area, demolition and clearance of properties acquired, building and site preparation, public improvements and relocation assistance . . . ." (1983 Loan Agreement, § 2.)

- "The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof in order that an accurate record of the [RDA's] liability to the City can be ascertained." (*Id.*, § 3.)

- "The [RDA] agrees to reimburse the City for all costs incurred for services by the City pursuant to this Agreement from and to the extent that funds are available to the [RDA] for such purpose pursuant to Section 33670 or from other sources . . .." (*Id.*, § 4.)

- "Although the parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the expenses incurred by the City under this Agreement shall be entitled to payment, consistent with the [RDA's] financial ability, in order to make the City whole as soon as practically possible." (*Ibid.*)

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[3] The Draft Report identifies the RDA's total loan repayment amount as $40,881,220, which, for purposes of this response letter, has been designated the "Disputed Loan Repayment Amount." The City's and RDA's financial spreadsheets and records, however, reflect that the amount repaid by the RDA pursuant to the Loan Agreements was $41,378,966.

- The loans all required interest payments, generally ranging from 7% to 10%, and were intended to be loans, not grants.

Similar terms and conditions are referred to in the Loan Advances entitling the City to full repayment of the amount loaned upon the RDA's ability to repay, with a pre-payment ability on the part of the RDA with no penalty. The 2006 loan restructuring schedule, described below, further evidences the RDA's obligation to repay the Loan Advances and accrued interest in full *during the life of the RDA* as the formally adopted repayment schedule was designed to ensure such timely repayment.

2. Repayment History.

At all times, the City and RDA honored the 1983 Loan Agreement, and terms pertaining to specific Loan Advances made under the authority of the 1983 Loan Agreement, as a legally valid and binding loan. Prior to the RDA's payment to the City of the Disputed Loan Repayment Amount, all Loan Advances made under the 1983 Loan Agreement had been at least partially -- and in several cases fully -- repaid. City and Successor Agency staff have prepared a summary of the repayment history of each of the Loan Advances made pursuant to the 1983 Loan Agreement (the "**Repayment Summary**"). The Repayment Summary is included as **Attachment 15** in this response Letter.

Page 1 of the Repayment Summary sets forth the advances that were fully repaid *prior* to 2011. As reflected in the Repayment Summary:

(i) the advances made in 1991 and 1992 were fully repaid in 1993 and 1994;

(ii) the advance made in 2004 was fully repaid in 2005; and

(iii) the advances made in 2005 were fully repaid in 2006, in connection with a comprehensive loan restructuring, which is discussed more fully below.

Page 2 of the Repayment Summary sets forth the Project Area No. 1 Loan Advances made in 1994, 1996, 2000, 2003, and 2009. As reflected in the Repayment Summary, in 1998, the RDA made a substantial interest payment on each of the 1994 and 1996 advances. The RDA made annual interest payments on the 2003 advance until 2006.

In 2006, to ensure the outstanding balance owed under all of the remaining Loan Advances would be fully repaid before the termination of the RDA's redevelopment plans, the City and RDA approved a comprehensive loan restructure (the "**Loan Restructure**"). Pursuant to the Loan Restructure, the RDA made a lump-sum payment to the City on April 1, 2006, in the amount of $5,691,250. Of that repayment amount, $2,982,767 was allocated towards the partial repayment of Project Area No. 1 Loan Advances, and $2,708,583 was allocated towards the

partial repayment of Project Area No. 2 Loan Advances. All outstanding interest remaining after the lump-sum payment was converted to principal, and a new repayment schedule was adopted. (See March 7, 2007 Staff Report with new payment schedule included as **Attachment 16** in this response letter.)

Page 3 of the Repayment Summary sets forth the following Project Area No. 2 advances: (i) advances made in Fiscal Year ("FY") 1990-91, FY 1991-92, and FY 1992-93, which advances were partially paid down in FY 1993-94, partially paid down in 1999, and restructured in 2006 in the Loan Restructure; and (ii) advances in 2000 and 2001 that were restructured in 2006 in the Loan Restructure.

Following the Loan Restructure and until the RDA's payment to the City of the Disputed Loan Repayment Amount in 2011 (which fully repaid all of the Loan Advances), the RDA made regular annual payments on all outstanding advances. City and La Quinta Successor Agency staff have prepared a series of spreadsheets that document, *in detail*, the actual payment history on all of the advances. The spreadsheets are included as **Attachment 17** to this response letter. City and Successor Agency staff are available to answer any questions you may have regarding the repayment history.

On February 1, 2011, the RDA Board adopted a minute action, authorizing the Executive Director, on behalf of the RDA, to repay in whole or in part the outstanding balances owed under the1983 Loan Agreement and implementing Loan Advances based on the availability of tax increment funds from the RDA. Pursuant to that authority, in March 2011 the Executive Director directed the full repayment of an outstanding balance of $22,000,000 payable from tax increment available from Redevelopment Project Area No. 1, and in April 2011, the full repayment of an outstanding balance of $19,378,966 payable from tax increment available from Redevelopment Project Area No. 2. With the repayment of the 1983 Loan Agreement and implementing Loan Advances, the RDA's indebtedness to the City had been fully repaid, and the executory contractual obligations were ***fully performed***—all prior to the enactment and effectiveness of ABx1 26.

3. ABx1 26 and AB 1484.

On June 15, 2011, the Legislature enacted, and on June 28, 2011, the Governor signed into law, ABx1 26 (and companion bill ABx1 27) which, among other provisions, added Parts 1.8 and 1.85 to Division 24 of the Health and Safety Code. A judicial challenge was filed against the two bills and reviewed directly by the California Supreme Court. Although the Legislature intended ABx1 26 to take effect immediately, the Court stayed most of the provisions in the two bills pending its decision.

On December 29, 2011, the Court issued its decision in the case, upholding the constitutionality of ABx1 26 and striking down as unconstitutional ABx1 27. (*California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231 (*"**CRA** Case"*).) Given that some of the deadlines in ABx1 26 the Court had stayed had already passed and others were fast approaching by the time it issued its decision, the Court "reformed" the legislation by extending a number of the deadlines for four months—including an extension of the October 1, 2011, dissolution date to February 1, 2012. (*Id.* at 274-276.)

On June 27, 2012, the Legislature enacted, and on that same day the Governor signed into law, AB 1484 which made technical and substantive changes to ABx1 26 and Part 1.85 of Division 24 of the Health and Safety Code.

B. JUSTIFICATION FOR REPAYMENT UNDER THE LOAN AGREEMENTS

1. The RDA's Repayment of the Disputed Loan Repayment Amount was not an "Asset Transfer" Pursuant to Section 34167.5.

Section 34167.5 provides, in pertinent 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 . . . that created a redevelopment agency or any other public agency, and the redevelopment agency. 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 [February 1, 2012], to the successor agency. . .

The SCO asset transfer review process is intended to determine assets transferred by the former redevelopment agency for no consideration, such as where an asset was transferred to the host city or county, or other public agency, for the sole purpose of transferring title, with the intent to insulate the asset from the requirements of ABx1 26.

The RDA's payment to the City of the Disputed Loan Repayment Amount was not a "transfer" for purposes of Section 341567.5. In repaying the Disputed Loan Repayment Amount to the City, the RDA did not transfer funds to the City without any consideration (as defined under black-letter contract law). The 1983 Loan Agreement was a legal, valid, and binding agreement between the City and RDA (and thus so too were the Loan Advances made pursuant to the 1983 Loan Agreement). The Loan Advances made by the City pursuant to the 1983 Loan

Agreement were also investments the City made in the various publicly owned improvements and other projects in and/or benefitting the RDA's redevelopment project areas (including even the Loan Advance made to enable the RDA to make the 2009/2010 SERAF payment which was made so the RDA could retain more of its Low and Moderate Income Housing Funds for affordable housing projects instead of using those earmarked funds for the SERAF payment). (*Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, 1087; *Pacific States Enterprises,* 13 Cal.App.4th at 1424.)

The RDA's payment of the Disputed Loan Repayment Amount was similarly not a "transfer" under any other provision of law. Section 1039 of the Civil Code defines "transfer" as "an act of the parties, or of the law, by which the title to property is conveyed from one living person to another." Because the funds loaned by the City to the RDA were never *owned* by the RDA, those funds were not an asset of the RDA. As such, the RDA could not convey title to those funds. When the City loaned the funds to the RDA, title to the funds remained with the City. (See, *In re Marriage of Lotz* (1981) 120 Cal. App. 3d 379, 386-387 [funds borrowed by husband from the husband and wife's closely held corporation was an asset of the corporation, and not a sum owed the community estate.].)

Further, in repaying the Disputed Loan Repayment Amount, the RDA repaid a debt it owed to the City with funds that, under Article XVI, Section 16 of the California Constitution and the CRL, were encumbered to repay an indebtedness of the RDA. As discussed more fully in Paragraph B1 above, a redevelopment agency's financial obligations to other public agencies constitute "indebtedness" of the agency, which entitles the other public agencies -- in this case the City -- to repayment from the redevelopment agency's available tax increment revenues. (See, Cal. Const., art. XVI, § 16; §§ 33670, 33675 [tax increment provisions]; (*Marek,* 46 Cal.3d at 1087 .)

2. <u>Section 34167.5 is not Applicable to the RDA's Repayment of the Disputed Loan Repayment Amount</u>.

Section 34167.5 was not intended to authorize the SCO to order the reversal of payments made by a redevelopment agency pursuant to enforceable obligations. Section 34167(f), which directly precedes Section 34167.5, provides "Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations." Furthermore, Section 34167(d) provides:

> For purposes of this part [Part 1.8], "enforceable obligation" is defined to include any of the following:
>
> . . .
>
> (2) Loans of moneys borrowed by the redevelopment agency for a lawful

> purpose, including, but not limited to, moneys borrowed from the Low and Moderate Income Housing Fund, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.
>
> . . .
>
> (5) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

As discussed above, the CRL and public policy not only authorized but encouraged agreements between the RDA and City to fund redevelopment agency projects and programs. Because the 1983 Loan Agreement (and thus the implementing Loan Advances) fit within the definition of "enforceable obligation" under Part 1.8 of ABx1 26, Section 34167(f) expressly authorized the RDA to continue to make payments and perform its obligations under the 1983 Loan Agreement and implementing Loan Advances. An order from the SCO to reverse the RDA's payments and performance under the 1983 Loan Agreement and implementing Loan Advances would ***directly interfere*** with the RDA's authority to make such payments and perform its obligations pursuant to enforceable obligations. The SCO does not have authority to order the RDA to repay the Disputed Loan Repayment Amount to the Successor Agency.[4]

3. <u>The 1983 Loan Agreement and Implementing Loan Advances Are Enforceable Obligations under Applicable Provisions in the Redevelopment Law and under Applicable Provisions in ABx1 26 and AB 1484</u>.

a. The Loans Are Enforceable Obligations Under The Pre-ABx1 26 CRL Which Was In Force When the Loans Were Repaid.

At the time the RDA fully repaid the City according to the terms and conditions in the 1983 Loan Agreement and implementing Loan Advances, the repayment was pursuant to enforceable contracts committing repayment of dedicated tax increment funds pursuant to controlling constitutional, statutory, and case authority. (See, Cal. Const., art. XVI, § 16; §§ 33670, 33675; *CRA,* 53 Cal.4th at 245-248; *City of Dinuba v. County of Tulare* (2007), 41

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[4] This analysis is consistent with the conclusion reached by the SCO in connection with at least one Asset Transfer Review completed under Section 34167.5. In its Review Report of the Milpitas Redevelopment Agency ("Milpitas Report"), covering a review of asset transfers from January 1, 2011, through January 31, 2012, the SCO does not include as an "unallowable transfer" a $3.6 million repayment by the Milpitas Redevelopment Agency to the City of Milpitas made in January 2012 pursuant to the terms and conditions of a 2004 city/redevelopment agency loan agreement. On page 2 of the Milpitas Report, the SCO identifies a total $175,613,510 in asset transfers, of which the SCO claims $147,108,600 as "unallowable" transfers. Attachment 1 in the Milpitas Report does not identify, as an "unallowable" transfer, the $3.6 million repayment. (The Milpitas Report can be accessed at the SCO's Website at <http://www.sco.ca.gov/aud_rda_asset_transfer_reviews.html>.

Cal.4th 859, 866; *Marek,* 46 Cal.3d at 1087; and *Pacific States Enterprises,* 13 Cal.App.4th at 1424.)

It cannot be emphasized enough: ***at the time of repayment, ABx1 26 had not been enacted.*** In fact, at the time of repayment, the operative language eventually adopted in ABx1 26 had not even been introduced or considered by the Legislature. Rather, ABx1 26 first appeared on June 14, 2011[5] and then was signed into law by the Governor the evening of June 28, 2011.

b. The Loans Are Enforceable Obligations Under ABx1 26

The provisions of ABx1 26 that took effect immediately were in Part 1.8 of Division 24 of the Health and Safety Code ("**Part 1.8**"), commonly referred to as the "suspension" provisions. As the name implies, Part 1.8 suspended the powers and authorities of all redevelopment agencies, including the ability to adopt new redevelopment plans or plan amendments, issue new bonded indebtedness, and enter into new contracts or incur new obligations. (§§ 34162(a), 34163(a) & (b), 34164(a).)

In contrast to those provisions, however, Part 1.8 clearly provides that, "Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations ***as defined in this chapter***, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations." (§ 34167(f) emphasis added.) As noted above, Part 1.8 defined "enforceable obligations" in Section 34167(d) as follows:

> For purposes of this part, "enforceable obligation" means any of the following:
> . . .
> (2) Loans of moneys borrowed by the redevelopment agency for a lawful purpose, including, but not limited to, moneys borrowed from the Low and Moderate Income Housing Fund, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.
> . . .
> (5) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

[5] A blank "spot bill" denominated as ABx1 26 was introduced on May 19, 2011 but contained no substantive provisions. All of what we know as ABx1 26 appeared by amendment in the Senate on June 14, 2011.

Because the 1983 Loan Agreement and the implementing Loan Advances fit within the definition of "enforceable obligation" under the suspension provisions (*e.g.,* Part 1.8) of ABx1 26, the RDA was fully authorized to repay all outstanding Loan Advances until such date as the RDA no longer existed and no longer could perform existing enforceable obligations; *i.e.,* until February 1, 2012, the dissolution date set by the California Supreme Court in the *CRA* Case). In other words, the *dissolution* provisions in ABx1 26, with the reformation of deadlines by the *CRA* case, did not become operative until February 1, 2012.

Under well-settled principles of statutory construction, the plain meaning of the two different definitions of "enforceable obligation" controls. (*Miklosy v. Regents of University of Cal.* (2008) 44 Cal.4th 876, 888 ["If the statutory language is unambiguous, we presume the Legislature meant what it said, and the plain meaning of the statute controls. [Citation.] We consider extrinsic aids, such as legislative history, only if the statutory language is reasonably subject to multiple interpretations."]; *Halbert's Lumber v. Lucky Stores* (1992) 6 Cal.App.4th 1233, 1238-1239 ["If the meaning is without ambiguity, doubt, or uncertainty, then the language controls. . . . There is nothing to 'interpret' or 'construe.'"].) The 1983 Loan Agreement and implementing Loan Advances are enforceable obligations under the plain meaning of the applicable sections of Part 1.80.

Even if there were some ambiguity, general principles of statutory construction still would lead to the same conclusion. "It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes." (*Los Angeles County Metropolitan Trans. Auth. v. Alameda Produce Market, LLC* (2011) 52 Cal.4th 1100, 1108-1109; *In re Jennings* (2004) 34 Cal.4th 254, 273.) A similar "cardinal rule" of statutory construction is that courts may not add provisions to a statute that do not exist. (*Los Angeles County* 52 Cal.4th at 1108-1109.) Had the Legislature intended city/agency agreements to be unenforceable during the "suspension" period of redevelopment agencies, or prior thereto, the Legislature would have expressly said so.

Any reliance by the SCO on the definition of "enforceable obligation" under Part 1.85 of Division 24 of the Health and Safety Code ("**Part 1.85**"), commonly known as the "dissolution" provisions, to reject the loan repayment would be unavailing.[6]

In Part 1.85, the definition of enforceable obligation includes:

> Loans of moneys borrowed by the redevelopment agency for a lawful purpose to the extent they are legally required to be repaid pursuant to a

[6] Neither definition of "enforceable obligation" in Part 1.8 nor Part 1.85 was amended by AB 1484.

> required repayment schedule or other mandatory loan terms. (§ 34171(d)(1)(B).)

Part 1.85 also contains the following "carve-out":

> For purposes of this part, "enforceable obligation" does not include any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency.... Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations. (§ 34171(d)(2).)

As it happens the 1983 Loan Agreement and implementing Loan Advances also fit the definition of "enforceable obligation" under Part 1.85, whether the definition is analyzed by its plain meaning or for legislative intent. Under a "plain meaning" analysis, the 1983 Loan Agreement and implementing Loan Advances are enforceable obligations under two paragraph of Section 34171(d)(1):

- Section 34171(d)(1)(B), which defines "enforceable obligation" as including "Loans of moneys borrowed by the redevelopment agency for a lawful purpose, to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms," and

- Section 34171(d)(1)(E), which defines "enforceable obligation" as including "Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

The Loan Advances made pursuant to the 1983 Loan Agreement were (A) legally and validly made pursuant to express provisions in the CRL, California Constitution, and case law, (B) the monies borrowed by the RDA were borrowed for capital improvement projects and were legally required to be repaid pursuant to the terms of the 1983 Loan Agreement and implementing Loan Advances, at times specified in the Loan Documents, and (C) at no time were either the 1983 Loan Agreement or implementing Loan Advances void as violating the debt limit or public policy.

The 1983 Loan Agreement and implementing Loan Advances are also enforceable obligations under the "carve out" in Section 34171(d)(2) of Part 1.85, in that the 1983 Loan Agreement was entered into within the first two years of the enabling of the RDA. Each of the Loan Advances was made pursuant to the 1983 Loan Agreement. Under the ***express terms*** of

the 1983 Loan Agreement, all funds loaned by the City to the RDA were required to be repaid. (1983 Loan Agreement, § 4.)

Under a legislative intent analysis, the 1983 Loan Agreement and implementing Loan Advances are "enforceable obligations" under Part 1.85, *even if they do not satisfy the carve-out language in Section 34171(d)(2).* This conclusion is compelled because the 1983 Loan Agreement and implementing Loan Advances *do* satisfy the criteria for an enforceable obligation in Section 34171(d)(1)(B) and in Section 34171(d)(1)(E), and these provisions stand on their own and are not subsumed, or modified, by Section 34171(d)(2). As noted by the court in issuing a preliminary injunction against the Department of Finance in *City of Pasadena Successor v. Matosantos*, Sacramento County Superior Court Case No. 34-2012-00134585-CU-MC-GDS, it is impossible for an agreement to be an enforceable obligation under Section 34171(d)(1)(E) and *not* be an enforceable obligation under Section 34171(d)(2). The court there held that the former is to be construed broadly and the latter narrowly and that the Legislature did not intend for agreements like the 1983 Loan Agreement and implementing Loan Advances at issue here to be invalidated. The court concluded: "But for the happenstance that the City itself is a party to the [loan agreement] at issue here, there would be no dispute that §34171(d)(2) is inapplicable . . . . [the Department of Finance's] reliance on HSC section 34171(d)(2) is misplaced. . . . " The same reasoning applies to the RDA's loan repayment to the City.

In issuing its decision, the court considered, among various other factors, the background and history surrounding the inclusion of Section 34171(d)(2) in ABx1 26. (See, *City of Pasadena Successor v. Matosantos*, Sacramento County Superior Court Case No. 34-2012-00134585-CU-MC-GDS, at p. 5.). After the Governor's redevelopment dissolution proposal was first proposed in January 2011 and prior to June 28, 2011 when ABx1 26 was signed into law and became effective, some redevelopment agencies apparently made transfers of real property to their cities, or entered into other transactions with their cities to transfer funds, for no consideration. The Legislature obviously responded to these "no consideration" transfers of real property and other so-called "last minute" transactions by some redevelopment agencies by including Section 34171(d)(2) in the subsequently enacted ABx1 26. (*Ibid.*).

Similarly, the California Attorney General's office itself has stated on the record that it is "far from clear" that ABx1 26 invalidates all city-redevelopment loans and that the apparent intent of those provisions of ABx1 26 was to invalidate only the "last minute" loan agreements and other arrangements between cities and their redevelopment agencies that took place after January 1, 2011. (Hearing for preliminary injunction, *City of Cerritos et al. v. State of California, et al.*, Sacramento County Superior Court Case No. 34-2011-80000952, January 27, 2012.)

Furthermore, another very recent court ruling supports the position that repaid loan agreement amounts are not subject to remittance to other taxing entities as part of the due

diligence review process. The same legal issues involved in the RDA's repayment of the Disputed Loan Repayment Amount are currently being litigated in the case entitled, *City of Murrieta v. California Department of Finance*, Sacramento Superior Court Case No. 34-2012-80001346. On April 19, 2013, in the *City of Murrieta* case, Judge Michael P. Kenny of the Sacramento County Superior Court issued a Preliminary Injunction against the State Defendants, including the Department of Finance, blocking the Department of Finance's "clawback" of Murrieta's general fund dollars. In order to issue the Preliminary Injunction, Judge Kenny had to find a "substantial likelihood" that the City of Murrieta *will prevail on the merits of its lawsuit.* The facts underlying the RDA's repayment of the Disputed Loan Repayment Amount are almost identical to the Murrieta situation, with the exception that City and Successor Agency have presented far more complete documentation for the loan and advances than what was before the Court in the *City of Murrieta* matter. In addition, in Murrieta's case, at least some of the loan payoff occurred *after* the adoption of ABx1 26, whereas in La Quinta, all of the loan payoff occurred months before ABx1 26 was adopted.

4. No Legislative Intent to Appropriate the City's General Funds.

Section 1 of ABx1 26 sets forth the Legislature's findings and declarations in enacting ABx1 26. The findings describe the increasing shift of property taxes away from the various taxing agencies that has resulted from the growth and expansion of redevelopment agencies (See, ABx1 26, Section 1(e), (f), & (g).) In passing ABx1 26, the Legislature expressly stated that its intent was to:

(1) Bar existing redevelopment agencies from incurring new obligations, prior to their dissolution.

(2) Allocate property tax revenues to successor agencies for making payments on indebtedness incurred by the redevelopment agency prior to its dissolution and allocate remaining balances in accordance with applicable constitutional and statutory provisions.

(3) Beginning [February 1, 2012], allocate these funds according to the existing property tax allocation within each county to make the funds available for cities, counties, special districts, and school and community college districts.

(ABx1 26, Section 1(j).)

Based on the expressly-stated intent of the Legislature, as set forth above, it was ***not*** the Legislature's intent to appropriate general fund monies from cities and counties, which would be the effect of disallowing the repayment of loans made by a host city or county to its redevelopment agency.

The City loaned general fund monies to the RDA. Neither the fact of the City loan nor the RDA's receipt and expenditure of those funds transformed those funds into tax increment. The source for general fund monies is general taxes imposed on all residents of the City, while tax increment is not a general levy on the City's residents. Because the outstanding loan amounts owed by the RDA were general funds, disallowing the repayment of those funds to the City, and requiring the funds to instead be transferred to the county auditor-controller for distribution to the taxing entities, is a ***direct appropriation*** of City general fund monies. Such an appropriation violates Article XIII of the California Constitution, Sections 24(b) and 25.5(a)(1), (2) & (3) (See, subsection 5 of this Paragraph C below).

Because the Legislature in passing ABx1 26 did not intend to appropriate general fund monies from cities and counties but rather intended to shift the allocation of unobligated tax increment, the RDA's repayment to the City of all general fund monies owed under the 1983 Loan Agreement and implementing Loan Advances should be recognized as legally valid under ABx1 26 and AB 1484, and not subject to an order of reversal by the SCO.

5. Use of the City's Property Tax and Sales and Use Tax Revenues Are Constitutionally Protected.

Aside from the enforceability of the 1983 Loan Agreement and implementing Loan Advances under the express language in ABx1 26 and AB 1484, constitutional provisions prohibit the distribution of the funds used to pay the Disputed Loan Repayment Amount to other taxing entities for the benefit of the State.

With the adoption by the voters of Proposition 1A in 2004, certain provision in Article XIII, Section 25.5 of the California Constitution were added to ensure that the percentage allocation of sales and use taxes and ad valorem property taxes to local taxing agencies were not decreased from the percentages that were established in November 2004. Specifically, the constitutional requirements are, in pertinent part:

> (a) On or after November 3, 2004, the Legislature shall not enact a statute to do any of the following:
>
> (1) . . . modify the manner in which ad valorem property tax revenues are allocated in accordance with subdivision (a) of Section 1 of Article XIII A so as to reduce for any fiscal year the percentage of the total amount of ad valorem property tax revenues in a county that is allocated among all of the local agencies in that county below the percentage of the total amount of those revenues that would be allocated among those agencies for the same fiscal year under the statutes in effect on November 3, 2004. . . . .

> (2)(A) . . . restrict the authority of a city, county, or city and county to impose a tax rate under, or change the method of distributing revenues derived under, the Bradley-Burns Uniform Local Sales and Use Tax Law set forth in Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code, as that law read on November 3, 2004.
>
> . . .
>
> (3) . . . 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. . . .

(Cal. Const., art. XIII, § 25.5.)

Additionally, in 2010, the voters approved Proposition 22, which among other provisions amended Article XIII, Section 24 of the California Constitution to add subdivision (b), which reads:

> The Legislature may not reallocate, transfer, borrow, appropriate, restrict the use of, or otherwise use the proceeds of any tax imposed or levied by a local government solely for the local government's purpose.

Relevant to the 1983 Loan Agreement and implementing Loan Advances at issue here, the City's general fund is comprised of sales and use tax revenue and ad valorem property tax revenue (***not*** tax increment), portions of which are specifically dedicated for the City. Thus, on both the "front" and "back" ends of the transactions consummated by the City's 1983 Loan Agreement and implementing Loan Advances—the "front" end being the City's loaning of funds from the general fund, and the "back" end being the repayment to the City of those originally-loaned general funds—the Legislature may not change the City's percentage allocation of these tax revenues: No authority exists under Article XIII, Sections 24(b) and 25.5(a)(2) to reallocate sales and use tax revenue allocations of the City here, and no ability exists under Article XIII, Section 25.5(a)(1) & (3) because neither ABx1 26 nor AB 1484 passed with a 2/3 majority.

If a State agency were to require the City to turn over amounts equal to the Disputed Loan Repayment Amount, the State essentially would be ordering a reallocation of the City's sale and use/property taxes to other taxing entities. Such an order violates Article XIII, Sections 24(b) and 25.5(a)(1), (2) & (3).

6. As a Charter City, the Legislature May Not Infringe Upon the City's Municipal Affairs, Which Includes Control Over Its Own Funds.

An interference with the repayment to the City of the Disputed Loan Repayment Amount violates another provision of the State Constitution. Article XI, Section 5 provides in pertinent part that any city may adopt a charter so that its ordinances and regulations adopted thereunder govern all "municipal affairs." Under the "Home Rule Doctrine," the ordinances and regulations of charter cities supersede state law with respect to municipal affairs, while state law is supreme with respect to matters of "statewide concern." (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 552 (*"Vista"*).)

In *Vista,* the high court concluded that no statewide concern exists that would justify prevailing wage laws enacted by the State to preempt wage rates adopted by a charter city for locally funded public works. (*Id.* at 556.) Fundamental to the Supreme Court's holding are the following well-settled precepts of California constitutional law, all of which apply to the City here, a charter city:

- The control over the expenditure of a city's own funds is "quintessentially a municipal affair." (*Id.* at 559.)
- The State cannot regulate the spending practices of charter cities "merely by identifying some indirect effect on the regional and state economies." (*Id.* at 562.)
- Autonomy with regard to the expenditure of public funds "lies at the heart" of what it means to be an independent governmental entity. (*Id.*)
- Nothing is of greater municipal concern "than how a city's tax dollars will be spent[.]" (*Id.*)

Equally important, the high court reaffirmed that the determination as to what constitutes a "municipal affair," over which the State has no legislative authority, and what constitutes a statewide concern is a matter for the courts, *not* the Legislature, to decide. (*Id.*) The concept of "statewide concern" is *not* coextensive with the State's police power. (*Id.*)

If a State agency were to invalidate charter city loan agreements with their former redevelopment agencies under ABx1 26, then ABx1 26 violates Article XI, Section 5 because the State has usurped the charter city's ability to govern how its tax dollars are to be spent. By nullifying the ability to receive money that the charter city not only *chose* to loan to its

redevelopment agency, in accordance with the CRL and its own charter authority,[7] but also *expected* to receive repayment, ABx1 26 unconstitutionally encroaches on the expenditure of a city's own funds, a "quintessentially a municipal affair." (*Vista,* 54 Cal.4th at 559.)

That the State may claim the purpose for invalidating city/redevelopment agency loan agreements relates to balancing the FY 2011-12 budget is of no consequence. The *Vista* case makes clear that the State can make its *own* resources available to support State services covered by the budget, ***but the State cannot achieve these ends by interfering with the fiscal policies of a charter city.*** (54 Cal.4th at 562.)

Additionally, the amendments in AB 1484, which added a process whereby city/redevelopment agency loan agreements *may* become "reactivated" as "enforceable obligations" *if* the Department of Finance determines the city's successor agency has made all required payments, does not impact the applicability of the Home Rule Doctrine. (See, §§ 34191.1, 34191.4(b).) The Legislature does not have the authority to regulate municipal affairs, such as the use of local agency funds and ability to contract for use of those funds. (*Vista*, 54 Cal. 4th at 562.) And yet, AB 1484 unconstitutionally changes the terms of repayment to cities by: (1) requiring oversight board and Finance approval before getting any repayment, (2) if approved, limiting when a city may get repaid, and (3) re-calculating the amount a city may be repaid. (§ 34191.4(b)(2).)

Therefore, any invalidation or reversal of the loan repayments made to the City—a charter city—would violate Article XI, Section 5, which means, in turn, that the loan repayments made by the RDA to the City at issue here must be honored and enforced.

7. The RDA and City Have Fully Performed Their Respective Obligations under the 1983 Loan Agreement and Implementing Loan Advances, and There Is No Clear Legislative Intent to Retroactively Apply ABx1 26 to the Repayment of Fully Performed City/RDA Loans.

Apart from the constitutional issues discussed above, the doctrine of "completed acts" (*i.e.,* complete repayment and performance of the 1983 Loan Agreement and implementing Loan Advances) dictates that the loan repayments should be enforced. The United States Supreme Court has either held or stated expressly that courts must not apply a statute that changes the legal consequence of completed acts without evidence of clear legislative intent to do so. (See, e.g., *Bowen v. Georgetown Univ. Hosp.* (1988) 488 U.S. 204, 208-209; see also, Kahn, Hilde E.,

[7] See, La Quinta City Charter, art. II, § 201 ["The City shall have the power to establish standards, procedures, rules or regulations related to any public financing."]; § 204 ["City shall have the power to utilize revenues from the general fund to encourage, support and promote economic development."].

Completed Acts, Pending Cases, and Conflicting Presumptions: The Retroactive Application of Legislation After Bradley (1990) 13 Geo. Mason U. L. Rev. 231, 234.)

California law follows the same principle. "It is a widely recognized legal principle . . . that in the absence of a clear legislative intent to the contrary statutory enactments apply prospectively." (*Strauss v. Horton* (2009) 46 Cal.4th 364, 470, quoting *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1193-1194.) "California continues to adhere to the time-honored principle . . . that *in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature or the voters must have intended a retroactive application.*" (*Strauss,* 46 Cal.4th at 470 [italics in original].)

When assessing whether a law acts retrospectively, California cases have a uniform approach:

> [A] . . . retrospective law "is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute." [Citations.] . . . "[E]very statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."

(*Strauss,* 46 Cal.4th at 471-472, quoting *Myers v. Philip Morris Co., Inc.* (2002) 28 Cal.4th 828, 839.)

Synthesizing these legal principles, it is beyond question that, *if* the Loan Advances repaid in March and April 2011 were to be "undone" either by ABx1 26 or AB 1484, *then* the legislation would be "retroactive." In order to be retroactive, the Legislature had to clearly *intend* for it to be retroactive. (*Strauss,* 46 Cal.4th at 470-472.) The separate definitions of "enforceable obligations" in Parts 1.8 and 1.85, along with the lack of any specific definition of "asset transfer" applicable to Section 34167.5 (and thus "asset transfer" must be interpreted under other California law as discussed above), support the statutory construction that ABx1 26's and AB 1484's provisions concerning loan repayments would *not* be retroactively applied. Indeed, Part 1.8—which took effect on June 28, 2011—provides that the "freeze" of redevelopment activities was intended only to preserve the ***unencumbered*** revenues and assets of the a redevelopment agency *that are not needed to pay for enforceable obligations.* (§ 34167(a) [emphasis added].)

If the Legislature intended to have AB1 26 or AB1484 apply retroactively—before June 28, 2011—to the ***already repaid*** City/RDA loan, it had to expressly say so. (*Strauss,* 46 Cal.4th at 470-472.)

C. CONCLUSION

For all of the reasons set forth above, the City and the La Quinta Successor Agency respectfully submit that the RDA's payment of the Disputed Loan Repayment Amount is not subject to reversal under the SCO asset transfer review process and that the SCO's order to transfer the amount of $40,881,220, as set forth in the Draft Report of April 15, 2013, must be omitted from the SCO's final report.

Very truly yours,

RUTAN & TUCKER, LLP

M. Katherine Jenson
City Attorney, City of La Quinta

MKJ:lr

cc: Frank J. Spevacek, City Manager, City of La Quinta (via e-mail)
Robbeyn Bird, Finance Director, City of La Quinta (via e-mail)
Betty J. Moya, Audit Manager, Division of Audits, State Controller's Office (via e-mail and overnight delivery)
Tuan M. Tran, Auditor, Division of Audits, State Controller's Office (via e-mail and overnight delivery)
Nicole Baker, Auditor, Division of Audits, State Controller's Office (via e-mail and overnight delivery)

Attachments:
1. City of La Quinta 1983 Cooperation Agreement
2. City of La Quinta Supplemental Cooperation Agreement – Project Area 1 – June 20, 1989
3. City of La Quinta Supplemental Cooperation Agreement – Project Area 1 – October 16, 1990
4. City of La Quinta Promissory Note -- $2,200,000 – Project Area 1 – June 30, 1994
5. City of La Quinta Promissory Note -- $4,321,796 – Project Area 2 – June 30, 1994
6. City of La Quinta Museum Loan -- $115,000 – Project Area 1 – March 7, 2000

7. City of La Quinta Financing Agreement -- $1,500,000 – Project Area 2 – June 20, 2000
8. City of La Quinta Promissory Note -- $1,100,000 – Project Area 2 – August 6, 2002
9. City of La Quinta Promissory Note -- $6,000,000 – Project Area 1 – April 1, 2003
10. City of La Quinta Loan Agreement -- $5,800,000 – Project Area 2 – June 15, 2004
11. City of La Quinta Financing Agreement -- $442,928 – Project area 1 – June 21, 2005
12. City of La Quinta Financing Agreement – $273,000 – September 20, 2005
13. City of La Quinta Financing Agreement -- $9,378,966 – Project Area 2 – December 4, 2007
14. City of La Quinta Financing Agreement -- $10,000,000 – Project Area 1 – December 1, 2009
15. Summary of Loan Advances and Repayment History
16. City of La Quinta Loan Restructure – Project Areas 1 & 2 – March 7, 2006
17. Loan Advances Repayment History -- Spreadsheets

Attachment 2—
SCO Revised Finding 1

JOHN CHIANG
California State Controller

September 10, 2013

Frank J. Spevacek, City Manager
La Quinta Redevelopment/Successor Agency
78495 Calle Tampico
La Quinta, CA 92247

Dear Mr. Spevacek:

The State Controller's Office has made a change to the findings in the draft redevelopment agency asset transfer review report dated April 17, 2013. This change was discussed with your staff in a phone conversation on July 22, 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 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 by phone at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/kw

Attachment

Finding and Order of the Controller

FINDING — Unallowable asset transfers to the City of La Quinta

The La Quinta Redevelopment Agency (RDA) made unallowable asset transfers of $68,876,762 to the City of La Quinta (City). The asset transfers to the City occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011. Those assets consisted of cash and capital assets.

Unallowable asset transfers were as follows:

- On January 31, 2011, the RDA transferred a total of $281,377 in cash to the City for interest payment on the RDA loan.
- On February 15, 2011, the RDA transferred capital assets of $27,445,583 in public-use properties to the City. To accomplish the transfer, the City and the RDA entered into an agreement under Resolution No. RA 2011-006. However, on October 2, 2012, the City turned over $27,445,583 in public-use properties to the Successor Agency under Successor Agency Resolution No. SA 2012-011.
- On February 28, 2011, the RDA transferred a total of $268,582 in cash to the City for interest payment on the RDA loan.
- On February 28, 2011, the RDA transferred $35,593,468 in cash to the City for loan repayment. The transfer was approved by the members of the City Council and the RDA on the February 1, 2011 City Council agenda.
- On March 3, 2011, the RDA sold the Highway 111 Mazella property to the City for $3,445,000 in cash. However, on March 13, 2013, the Oversight Board retroactively approved the sale of the property under Oversight Board Resolution No. OB 2013-004.
- On March 3, 2011, the RDA transferred $5,287,752 in cash to the City for loan repayment. The transfer was retroactively approved by members of the City Council and the RDA on the March 15, 2011 City Council agenda.
- On April 30, 2011, the RDA sold the Silver Rock property to the City for $4,875,000 in cash. However, on March 13, 2013, the Oversight Board retroactively approved the sale of the property under Oversight Board Resolution No. OB 2013-004.

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. Those assets should be turned over to the Successor Agency for disposition in accordance with H&S Code section 34177 (d) and (e). However, it appears that some of those assets also may be subject to the provisions of H&S Code section 34181(a). H&S Code section 34181(a) states:

> The oversight board shall direct the successor agency to do all of the following:
>
> a) Dispose of all assets and properties of the former redevelopment agency; provided however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a government purpose, such as roads, school buildings, parks, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset. Any compensation to be provided to the successor agency for the transfer of the asset shall be governed by the agreements relating to the construction or use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value."

Order of the Controller

Based on H&S Code Section 34167.5, the City of La Quinta would have been ordered to reverse the transfer of the above assets in the amount of $68,876,762; however, because the $27,445,583 in public-use properties were turned over to the Successor Agency on October 2, 2012, (Resolution No. SA 2012-011), and the Oversight Board retroactively approved the sale of the Highway 111 Mazella and Silver Rock properties (Resolution No. OB 2013-004), only the remaining amount of $41,431,179 must be turned over to the Successor Agency (see Schedule 1).

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

Schedule 1—
Unallowable RDA Assets
Transferred to the City of La Quinta
January 1, 2011, through January 31, 2012

Unallowable transfers to the City of La Quinta:

Current assets:		
Cash transfer to the City for loan interest payment (January 31, 2011)	$	281,377
Cash transfer to the City (February 28, 2011)		35,593,468
Cash transfer to the City for loan interest payment (February 28, 2011)		268,582
Cash transfer to the City (March 3, 2011)		5,287,752
Cash received from the City for Highway 111 Mazella (March 3, 2011)		(3,445,000)
Cash received from the City for Silver Rock (April 30, 2011)		(4,875,000)
Capital assets:		
Public use properties (February 15, 2011)		27,445,583
Highway 111 Mazella (March 3, 2011)		3,445,000
Silver Rock (April 30, 2011)		4,875,000
Total unallowable transfers to the City		68,876,762
City turned over public use properties (October 2, 2012)		(27,445,583)
Total transfers subject to H&S Code section 34167.5	$	41,431,179

State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874

http://www.sco.ca.gov

S13–RDA–950

Attachment 3—
Successor Agency's Response to Revised Finding 1

RUTAN
RUTAN & TUCKER, LLP

M. Katherine Jenson
Direct Dial: (714) 641-3413
E-mail: kjenson@rutan.com

September 19, 2013

VIA E-MAIL, OVERNIGHT DELIVERY, AND U.S. CERTIFIED MAIL

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

Re: La Quinta Successor Agency's Response to SCO Letter Dated September 10, 2013, Received on September 13, 2013, Enclosing Revised "Finding and Order of the Controller" for Draft Asset Transfer Review Report

Dear Mr. Mar:

I serve as City Attorney for the City of La Quinta ("**City**") and counsel to the City of La Quinta As Successor Agency to the Former La Quinta Redevelopment Agency ("**La Quinta Successor Agency**").

On April 19, 2013, the City and Successor Agency received Jeffrey V. Brownfield's letter dated April 15, 2013, which included the draft Asset Transfer Review Report of the review of the State Controller's Office (the "**Draft Report**" or "**SCO**," as applicable) conducted pursuant to Health and Safety Code section 34167.5 of all asset transfers made by the former La Quinta Redevelopment Agency ("**RDA**") to the City or any other public agency after January 1, 2011. On April 26, 2013, I prepared and sent to your attention a response letter to the Draft Report (the "**April 26 La Quinta Response Letter**"). The April 26 La Quinta Response Letter is incorporated herein by this reference.

The City and Successor Agency have received a second letter from Jeffrey V. Brownfield dated September 10, 2013, sent by certified mail and postmarked September 10, 2013, and received (and signed for) by the City on September 13, 2013 (the "**September 10 SCO Letter**"). Enclosed with the September 10 SCO letter was a revised "Finding and Order of the Controller" (the "**Draft Revised Finding and Order**") for the Draft Report.

The Draft Revised Finding and Order lists as unallowable transfers all of the transfers Previously listed in the Draft Report, as well as the following additional transfers: (the "**Additional Transfers**")

- On January 31, 2011, the RDA transferred a total of $281,377 in cash to the City for interest payment on the RDA loan.

- On February 28, 2011, the RDA transferred a total of $268,582 in cash to the City for interest payment on the RDA loan.

With respect to all of the foregoing transfers, page 2 of the Draft Revised Finding and Order sets forth the following proposed Order of the Controller:

> Based on H&S Code Section 34167.5, the City of La Quinta would have been ordered to reverse the transfer of the above assets in the amount of $68,876,762; however, because the $27,445,583 in public-use properties were turned to the Successor Agency on October 2, 2012 (Resolution No. SA 2012-011) and the Oversight Board retroactively approved the sale of the Highway 111 Mazella and Silver Rock properties (Resolution No. OB 2013-004), only the remaining amount of $41,431,179 must be transferred to the Successor Agency (see Schedule 1).
>
> The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

The Additional Transfers were cash transfers of regular interest payments on the RDA's loan advances. Because neither of the Additional Transfers relates to the SilverRock or Mazella property, and the only "assets" at issue in the Draft Report are the cash transfers by the RDA to the City for loan repayment,[1] this Letter (and the April 26 La Quinta Response Letter, incorporated by reference) discusses only the loan repayments.

With respect to all of the transfers listed on page 1 of the Draft Revised Finding and Order that relate to the RDA's repayment of $41,431,179 (the "**Disputed Loan Repayment Amount**") including, without limitation, the Additional Transfers, the City and La Quinta Successor Agency hereby reaffirm and reassert all of the arguments and points raised in the April 26 La Quinta Response Letter.

Further, the Additional Transfers constituted regular, monthly interest payments on the RDA loan. Such payments were made in accordance with the repayment provisions set forth in the "Loan Documentation" (as defined in the April 26 La Quinta Response Letter), and were not "prepayments" of any portion of the RDA loan. The fact that the interest payments occurred after January 1, 2011, does not render them reversible pursuant to Health and Safety Code section 34167.5, as they were made pursuant to repayment schedules set forth in valid Loan Documentation.

---

[1] As I reported in the April 26 La Quinta Response Letter, I confirmed this issue with SCO representatives Betty Moya, Nicole Baker, and Tuan Tran.

This position is confirmed by California Superior Court Judge Allen H. Sumner, in his Statement of Decision for Case No. 34-2013-80001485 (the "**Statement of Decision**"), filed on September 13, 2013. In Page 7 of the Statement of Decision, Judge Sumner, citing Health and Safety Code sections 34171(d)(2) and 34167(f), acknowledges that any interest payments made by the RDA during 2011 would arguably constitute a payment due pursuant to an enforceable obligation, and thereby not subject to "claw-back" under the dissolution law. (Statement of Decision, P. 7.) A copy of the decision is enclosed with this Letter.

For all of the reasons set forth in the April 26 La Quinta Response Letter and in this Letter, the City and the La Quinta Successor Agency respectfully submit that the RDA's payment of the Disputed Loan Repayment Amount is not subject to reversal under the SCO asset transfer review process and that the SCO's order to transfer the amount of $41,431,179, as set forth in the Draft Revised Finding and Order of September 10, 2013, must be omitted from the SCO's final report.

Very truly yours,

RUTAN & TUCKER, LLP

M. Katherine Jenson
City Attorney, City of La Quinta

MKJ

cc: Frank J. Spevacek, City Manager, City of La Quinta (via e-mail)
Robbeyn Bird, Finance Director, City of La Quinta (via e-mail)
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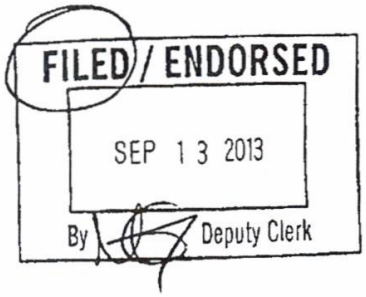
Tuan M. Tran, Auditor, Division of Audits, State Controller's Office (via e-mail and overnight delivery)
Nicole Baker, Auditor, Division of Audits, State Controller's Office (via e-mail and overnight delivery)

Enclosures: Statement of Decision



SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CITY OF LA QUINTA, et al.,

Petitioners and Plaintiffs,

v.

ANA J. MATOSANTOS, et al.,

Respondents and Defendants.

Case No.: 34-2013-80001485

STATEMENT OF DECISION AFTER HEARING DENYING PETITION FOR WRIT OF MANDATE

On August 8, 2013, the court issued a tentative ruling denying the petition for writ of mandate. Hearing was held August 9, 2013. Petitioners City of La Quinta and the Successor Agency to the City of La Quinta Redevelopment Agency (collectively "City") were represented by William Ihrke and M. Katherine Jenson. Respondent Department of Finance ("DOF") was represented by Deputy Attorneys General Alexandra Robert-Gordon and Peter Southworth.

At the request of Petitioner, the court issued a proposed statement of decision, and has considered Petitioner's objections thereto. The court now issues the following statement of decision.

INTRODUCTION

For over 20 years the City of La Quinta made a series of loans to its Redevelopment Agency ("RDA"). Although some loans had been repaid, as of early 2011 the RDA still owed the City approximately $41 million.

In June 2011, the Legislature dissolved redevelopment agencies. Property tax revenues that had gone to the redevelopment agencies were reallocated to other local entities. Several months prior to its dissolution, the RDA repaid the City the entire $41 million outstanding on the City's loans.

As part of the dissolution of redevelopment agencies, the Legislature sought to "claw back" any assets a former redevelopment agency transferred after January 2011 to the agency's sponsoring city. Here, DOF determined the RDA's payment of the $41 million to the City was not made pursuant to an "enforceable obligation," and thus the $41 million is available for distribution to other local entities.

By this petition the City challenges that determination. For the reasons discussed below, the court finds DOF's determination was correct and denies the petition.

FACTUAL BACKGROUND

The Community Redevelopment Law and Tax Increment Financing

In 1945, the Legislature enacted the Community Redevelopment Law authorizing cities and counties to establish redevelopment agencies to remediate urban decay. (Health & Saf. Code § 3300 et seq.; see also *California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 245-46.)[1] Redevelopment agencies funded their activities primarily through tax increment financing: the redevelopment agency received property tax revenue in excess of the property tax revenue allocated to other local entities prior to the redevelopment plan. (*Id.* at 246-47.) However, redevelopment agencies were not limited to tax increment financing. They were also permitted to borrow money to fund their activities. (§ 33601 [redevelopment agency may borrow money from any public agency]; § 33610 [city or county may loan funds to agency].)

[1] Unless otherwise specified, all statutory references are to the Health and Safety Code.

Formation of the RDA and the City's Loans

In July 1983, the City established the RDA pursuant to the Community Redevelopment Law. (Spevacek Decl., Ex. B.) In August 1983, the City and the RDA entered into a Cooperation Agreement providing the City may, but was not required to, advance funds to the RDA. Although the RDA agreed to repay the City with interest at 10 percent, there was no repayment schedule. Instead, repayment was to be made "consistent with the RDA's financial ability, in order to make the City whole as soon as practically possible." (Spevacek Decl., Ex. C, pp. 24-23.)

By 2006, the City had made eleven loans to the RDA. (Spevacek Decl., ¶ 20.) In March 2006, the City and RDA entered into a Loan Restructuring Agreement restructuring $22 million in outstanding loans. Under the restructuring, the City would receive ***only*** interest payments until 2030. (Spevacek Decl., ¶¶ 21-22, 23, Ex. G, pp. 278, 281-293.) In 2030, annual balloon payments of principal would begin, with the loans fully repaid by 2039. (*Id.*)

Following the 2006 Loan Restructuring Agreement, the City made two additional loans to the RDA: $9 million in 2007, and $10 million in 2009. (Spevacek Decl. ¶¶ 25, 26.) The 2007 loan agreement contained a separate repayment schedule by which the loan would not be repaid until 2019, at the earliest. (Spevacek Decl., Ex. H, p. 299.)[2] According to the City, the RDA made only interest payments on this loan until it made the challenged repayment in 2011. (Spevacek Decl., ¶ 26b, Ex. I, p. 329.) The 2009 loan agreement did not contain any repayment schedule. (Spevacek Decl., Ex. H, p. 311.)[3]

---

[2] The 2007 loan agreement provided:

> The Loan Principal and the accrued interest shall be repaid by Agency over an 11-year period in annual installments from a combination of land sale proceeds and Project No. 2 non-housing tax increment revenue. The first annual installment shall be prorated for the period from the date of this Agreement to June 30, 2008, and shall be paid to City not later than July 31, 2008. The amount of the annual installment shall be identified in the annual adoption of the budget or through a subsequent appropriation of the Agency Board of Directors. Subsequent annual installments shall cover succeeding fiscal year periods and shall be payable by the July 31st following the end of a fiscal year (i.e., second annual installment shall be for the period July 1, 2008 through June 30, 2009, and shall be payable by July 31, 2009).

(*Ibid.*)

[3] The agreement provided: "Loan Principal and the accrued interest shall be repaid by Agency. Repayments should be applied first to interest and second to principal." (*Ibid.*)

As of early 2011, the outstanding principal owed the City on all loans was $41 million.

The Dissolution Law

In early 2011, the Legislature began considering eliminating redevelopment agencies. In June 2011, it enacted AB1X 26 doing just that. In December 2011, the California Supreme Court upheld the constitutionality of ABIX 26 in *Matosantos*, *supra*, 53 Cal.4th 231. In June 2012, the Legislature adopted AB 1484 modifying the provisions of AB1X 26. The court refers to AB1X 26 and AB 1484 collectively as the "Dissolution Law."

One of the primary goals of the Dissolution Law was to increase the share of property taxes going to cities, counties, schools and other local entities by reallocating the tax increment formerly going to redevelopment agencies. (See, e.g., *Matosantos*, *supra*, 53 Cal.4th at 241, 250, 263; 2011 Stats., 1st Ex. Sess., ch. 5, § 1.) This reallocation, however, would not happen immediately. The Legislature established "successor agencies" responsible for winding up the affairs of the former redevelopment agencies, including making payments and otherwise performing the former redevelopment agencies' "enforceable obligations." (§ 34177.)

The county auditor-controller now determines the amount of property tax revenue that would have been allocated to the former redevelopment agency. This is allocated to the successor agency to pay the redevelopment agency's enforceable obligations. Any remaining funds are allocated to other local entities within the county. (§§ 34182, 34183.) Thus, the tax increment revenue is not reallocated to other local entities until the redevelopment agency's enforceable obligations are paid.

The Contested Repayment

Anticipating the dissolution of redevelopment agencies, in February and March of 2011 the RDA repaid the entire $41 million loaned by the City. It is clear from the City Council's minutes the decision to repay the $41 million was motivated by the Legislature's proposal to eliminate redevelopment agencies. (Spevacek Decl., Ex. J, pp. 376-378.) At the time the loan was repaid, the Dissolution Law had not been enacted.

The Due Diligence Review Process

As part of the process of dissolving redevelopment agencies, the successor agency conducts a due diligence review to determine the "unobligated balances" of the former redevelopment agency now available for allocation to other local entities. (See generally § 34179.5.) The review determines the value of any assets transferred by the former redevelopment agency to its sponsor city between January 1, 2011 and June 30, 2012. (§ 34179.5(c)(2).) For any such transfer not required by an "enforceable obligation," the amount transferred is added to the unobligated balance available for allocation to other local entities. (§ 34179.5(c)(6).)

The successor agency's oversight board submits its due diligence review to the DOF for final determination of the amount available for disbursement to other local entities. (§ 34179.6(c).) Upon DOF's determination, the successor agency is required to transmit this amount to the county auditor-controller to be disbursed. (§ 34179.6(f).)

The Contested Determination

Here, the successor agency's due diligence review concluded the $41 million loan repayment transferred from the RDA to the City was made pursuant to enforceable obligations, and thus none of this money was available for disbursement to other local entities. (Spevacek Decl., Ex. K, pp. 394, 405 and L.)

DOF disagreed, finding:

> HSC section 34171(d) states agreements, contracts, or arrangements between the City and the Agency are not enforceable obligations. Therefore, the transfer was not made pursuant to an enforceable obligation and is not permitted.

(Spevacek Decl., Ex. Q, p. 463-64.) DOF determined the entire $41 million was available for disbursement to local entities. The successor agency was directed to transmit $41 million to the county auditor-controller.[4]

[4] DOF ordered the successor agency to transmit $41 million to the county-auditor controller within five days. (*Id.*, p. 464.) It appears the City has not done so and both sides have agreed to maintain the status quo pending the outcome of this petition.

The City challenges DOF's determination. It seeks mandate and declaratory relief finding payment of the $41 million was an "enforceable obligation" by the RDA owed to the City, and an order preventing DOF and the county auditor-controller, or any of the other respondent local agencies, from seeking to recoup the $41 million.

The court finds the City had no "enforceable obligation" entitling it to repayment of the entire $41 million in 2011. Accordingly, the petition is denied.

ANALYSIS

1. Unobligated funds v. enforceable obligations

At the hearing, the City argued a threshold issue must be addressed before deciding whether the loans were enforceable obligations. That is whether the $41 million used by the RDA to repay the loans was ***encumbered***. The City maintains this entire amount was encumbered by the loans themselves. The City argues the due diligence review process can only allocate unencumbered funds to other local entities. (§ 34179.5, subd. (a.).) Therefore, because the entire $41 million was encumbered, no portion may be allocated to other entities.

No one disputes the loans were valid when made. The City argues the loan agreements evidenced an ***indebtedness*** of the RDA, to be repaid with tax increment revenue. Prior to the Dissolution Law, no one would dispute this either.

Prior to dissolution, article XVI, section 16(b), of the California Constitution and section 33670, subdivision (b), provided tax increment revenue shall be allocated to a redevelopment agency "to pay the principal of and interest on loans, moneys advanced to, or ***indebtedness***...incurred by the redevelopment agency ...." (Emphasis added.) Both sections also provide, "when the loans, advances, and ***indebtedness*** ... have been paid, all moneys thereafter received from taxes upon the taxable property in the redevelopment project shall be paid to the respective taxing agencies as taxes on all other property are paid." (Emphasis added.)

In *Marek v. Napa Community Redevelopment Agency* (1988) 46 Cal.3d 1070, our Supreme Court held the term "indebtedness" included a redevelopment agency's executory

contractual obligations. Thus, at least prior to the Dissolution Law, until ***all*** the redevelopment agency's loans, advances and indebtedness had been paid, ***all*** tax increment belonged to the redevelopment agency.

The City's argument assumes the Dissolution Law did not change this: the entire $41 million remains an indebtedness of the RDA and is thus "encumbered." As a result, no portion of the $41 million can be allocated to other entities until the City's entire loan is repaid.

However, the Dissolution Law did change this state of affairs. As our Supreme Court explained in *Matosantos*, article XVI, section 16, subdivision (b), of the Constitution, section 33670, subdivision (b), and *Marek* no longer protect a redevelopment agency's receipt of tax increment up to the amount of its total indebtedness. (*Matosantos, supra*, 53 Cal.4th at 258-59.) Although the Legislature was ***permitted*** to grant redevelopment agencies tax increment up to the amount of their indebtedness, it was not ***required*** to do so. The Legislature could decide to allocate tax increment less broadly under the Dissolution Law than in the past, "most notable by allocating tax increment for only some, but not all, obligations owed by redevelopment agencies to their community sponsors." (*Id.* at 258.) With the due diligence review, the Legislature has done just that. The Dissolution Law reallocates to other local entities tax increment revenue formerly allocated to the RDA to pay its indebtedness to the City.

At the hearing, the City also argued the question whether the $41 million is unencumbered is entirely separate from whether the City's loans are an enforceable obligation. This argument does not persuade either.

The term "unencumbered" appears only once in the Dissolution Law – in subdivision (d) of section 34177. The Successor Agency is required to "Remit ***unencumbered balances*** of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities ...." Section 34179.5, subdivision (a), which describes the due diligence review process, does not use the term "unencumbered." Instead, it uses the term "unobligated" – "each successor agency shall ... conduct a due diligence review to determine the ***unobligated balances*** available for

transfer to taxing entities." The City uses the two terms interchangeably;[5] the court agrees they are interchangeable.[6]

Section 34179.5, subdivision (c)(6), directs any amounts transferred after January 1, 2011, by the RDA to the City not required by an enforceable obligation must be added to the balance available for transfer to other entities. The Dissolution Law does not define the term "***unobligated.***" As discussed below, it does define the term "enforceable ***obligation.***" The court finds the most reasonable interpretation is the term "unobligated balances" means balances not required to pay enforceable obligations. Thus, the $41 million was "unobligated" if the loans were not enforceable obligations.

2. The loans are not enforceable obligations

DOF determined the RDA's repayment of the loans in early 2011 was not made pursuant to an enforceable obligation. Therefore, the entire $41 million is available for distribution to other local entities. DOF was correct.

A. The repayment was not an enforceable obligation under section 34171

DOF's determination was part of the due diligence review process. For purposes of that process, the term "enforceable obligation" is defined by section 34171, subdivision (d). Controlling here, agreements between the City and its RDA are expressly excluded from the definition of enforceable obligation:

> For purposes of this part, enforceable obligation does not include any agreements, contracts, or arrangements between the city . . .

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[5] See Opening at 22:10-11 – "the amount repaid to the City for the Loan Advances was encumbered and obligated indebtedness of the RDA."

[6] Section 34179.5 provides the due diligence review is "in furtherance of subdivision (d) of Section 34177." In other words, it is in furtherance of the requirement successor agencies must remit "unencumbered balances" to the auditor-controller for distribution to local entities. Interpreting section 34177, subdivision (b), and 34179.5 together, the court finds the Legislature intended the two terms -- ***unencumbered balances*** and ***unobligated balances*** -- to mean the same thing. Both sections deal with the successor agency's obligation to transfer "unencumbered" or "unobligated" balances to the county auditor-controller for distribution to local entities. There is no indication in using the two terms to describe the same process that the Legislature intended different meanings.

> that created the redevelopment agency and the former redevelopment agency. . . .

(§ 34171, subdivision (d)(2).)

The City acknowledges its loan agreements would be excluded from this definition of enforceable obligations. (Opening at 25:8-9.) However, there is an exception recognizing loan agreements "entered into between the redevelopment agency and the city . . . that created it, ***within two years of the date of creation of the redevelopment agency***, may be deemed to be enforceable obligations." (§ 34171, subdivision (d)(2) [emphasis added].)

The City argues its loans to the RDA are saved by this prevision: the 2006 restructuring agreement and the 2007 and 2009 loan agreements merely implemented the 1983 Cooperation Agreement, which was entered into within two years of the RDA's creation. (Opening at 25:8-13.) The City argues the Cooperation Agreement established a "line of credit." Each subsequent loan merely memorialized the amount and terms of repayment pursuant to that initial line of credit. (Opening at 25:13-17.)

DOF maintains the Cooperation Agreement did not establish a "line of credit" as defined by Black's Law Dictionary. (Opp. at 22:3-25.) The City chides DOF for using the 5th edition of Black's, rather than the 8th edition. (Reply at 22:6-12.) The court finds this battle of the dictionaries unhelpful.[7]

First, regardless which definition is used, the Cooperation Agreement was not a line of credit. Under either definition a line of credit is a fixed limit or maximum amount of credit granted by a lender to a borrower. As DOF argues, the Cooperation Agreement did not obligate the City to loan any money to the RDA, much less a fixed or maximum amount of money. Instead, it merely provides "The City ***may, but is not required to***, advance necessary funds to the Agency...." (Spevacek Decl., Ex. C, p. 23 [emphasis added].) The Cooperation Agreement was not a loan agreement between the City and the RDA; the City did not agree to loan any money to the RDA.

[7] As Judge Learned Hand counsels, "It is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary." (*Cabell v. Markham* (1945) 148 F.2d 737, 739.)

Second, the subsequent agreements, where the City actually loaned money to the RDA, do not refer to the 1983 Cooperation Agreement. This supports the conclusion the 2006, 2007, and 2009 agreements are separate, stand-alone agreements. Since none of these agreements were entered into within two years of the RDA's creation, none are saved by the exception in section 34171, subdivision (d)(2).

B. The repayment was not an enforceable obligation under section 34167

As the City notes, the analysis is complicated by the Legislature's use of two different definitions of "enforceable obligation" – one in section 34167 and one in section 34171.[8] The due diligence review incorporates the definition found in section 34171 discussed above, which DOF correctly applied in this case.

However, even if the definition in section 34167 were applied, the RDA's repayment to the City would still not have been pursuant to an "enforceable obligation."

In its definition of "enforceable obligation," section 34167 makes no mention of agreements between a city and its redevelopment agency. Instead, section 34167, subdivision (d), simply defines "enforceable obligations" as:

> For purposes of this part, enforceable obligation means any of the following:
>
> . . . .
>
> (2) Loans of moneys borrowed by the redevelopment agency for a lawful purpose ... to the extent they are legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.
>
> . . . .
>
> (5) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy.

Section 34167, subdivision (f), additionally provides:

[8] Section 34167 is found in the "suspension" part of the Dissolution Law, enacted by ABIX 26, which took effect July 28, 2011. Section 34171 is found in the "dissolution" part of the Dissolution Law, which took effect February 1, 2012.

> Nothing in this part shall be construed to interfere with a redevelopment agency's authority, pursuant to enforceable obligations as defined in this chapter, to (1) make payments due, (2) enforce existing covenants and obligations, or (3) perform its obligations.

The City argues its loan agreements meet this definition, and the RDA was permitted to repay the loans pursuant to subdivision (f). This argument fails because no matter how phrased, the RDA was not ***required*** to repay the ***entire*** principal in 2011.

Subdivision (d)(2) states enforceable obligations include loan repayments, but only "to the extent they are ***legally required to be repaid pursuant to a required repayment schedule or other mandatory loan terms.***" (Emphasis added.) Similarly, subdivision (f) provides the RDA may "make payments ***due***." DOF argues the $41 million repayment was not made pursuant to an enforceable obligation because the loan agreements did not require a scheduled payment of $41 million in late February or early March 2011. (Opp 21:11-13.) The court agrees.

The $41 million repayment was solely of principal. However, no principal payments were required on any of the loans in 2011. The 2006 loan restructuring agreement's repayment schedule did not require the RDA to begin repaying the principal until 2030. The 2007 loan agreement's repayment schedule spread payments over 11 years, beginning in 2008. The 2009 loan agreement contains no repayment schedule.

Although the loan agreements require the RDA to repay the City, they did not require repayment of any principal in 2011, and certainly did not require repayment of the entire loan amount. The only payments arguably due in 2011 were interest payments.[9]

The City notes all three loan agreements allowed the RDA to repay the principal at any time without penalty. This may be true, but is not dispositive. That early repayment was ***permitted*** does not turn the $41 million repayment into one ***required*** by a repayment schedule or other mandatory obligation within the meaning of subdivision (d)(2).

Alternatively, the City argues the loan agreements meet the definition of "enforceable obligation" contained in subdivision (d)(5): "Any legally binding and enforceable agreement or

[9] Neither party discusses this possibility.

contract that is not otherwise void as violating the debt limit or public policy." This argument also fails.

First, the court finds the specific definition in subdivision (d)(2) prevails over the general definition in subdivision (d)(5). (See, e.g., *Action Apartment Assn., Inc. v. City of Santa Monica* (2007) 41 Cal. 4th 1232, 1246; Code Civ. Proc., § 1859.) Second, even under the catchall definition of subdivision (2)(5), the RDA was not required to repay the full $41 million in 2011.

Finally, the City argues the loan agreements assumed the City would eventually be repaid by ***the RDA*** using ***tax increment***. The Dissolution Law dissolved the RDA and eliminated the separate category of tax increment revenue by redesignating it ordinary property tax revenue. The City thus argues the RDA was required to repay the loan while it was still in existence and receiving tax increment. This argument elevates form over substance. Although the RDA has been dissolved, the Legislature created a successor agency to wind down its affairs and perform its enforceable obligations. (§§ 34173, 34177.) Moreover, although tax increment is no longer called such, this property tax revenue is still collected and allocated to successor agencies to pay the RDA's enforceable obligations. (§ 34182, subd. (c)(1) [tax increment formerly allocated to redevelopment agency now "deemed property tax revenues" and allocated according to Dissolution Law]; § 34183 [property tax revenues allocated to successor agency to pay enforceable obligations].) .

3. The Dissolution Law did not invalidate the loans

The parties spend much effort briefing whether the Legislature impermissibly rendered the City's loans to the RDA unenforceable. However, the Legislature appears to have contemplated a middle course – effectively modifying the terms of the loans, while still providing for their ultimate repayment.

As DOF notes, the fact the $41 million repaid to City in early 2011 should instead be allocated to other local entities does not mean the City will never be repaid. (Opp. at 4:24 to 5:6.) Once DOF completes the due diligence review, section 34191.4 provides:

> [U]pon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city . . . that created by the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes.

Once designated as enforceable obligations under section 34191.4, the City's loans may then be placed on the successor agency's recognized obligation payment schedule ("ROPS") for payment beginning in fiscal year 2013-14. (§ 34191.4(b)(2)(A).)

4. The Dissolution Law applies retroactively

The City makes several arguments challenging the retroactive effect of the Dissolution Law. The City notes the Community Redevelopment Law allowed the City's loans to the RDA at the time they were made, and the loans were repaid before the Dissolution Law was enacted. This is not disputed. The City then argues the Dissolution Law should not be construed to ***retroactively*** invalidate early repayment of the loans. This argument fails.

The City argues the "first rule" of statutory construction is that statutes are construed to operate prospectively absent clear indication the Legislature intended them to operate retroactively. (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 840; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1193-94, 1207-09.) Not so. The most fundamental rule of construction is to interpret the statute to effectuate the Legislature's intent. (*Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 686.) The presumption against retroactivity is "not a straightjacket," and evidence the Legislation intended a statute to operate retroactively may be found in the wording of the statute itself. (*Id.* at 687; *Russell v. Superior Court* (1986) 185 Cal.App.3d 810, 818.)

The City argues there is no clear indication the Legislature intended the Dissolution Law to retroactively invalidate the RDA's $41 million repayment made in early 2011. However, the Dissolution Law clearly does evidence the Legislature's intent to retroactively invalidate some transfers between redevelopment agencies and their sponsor cities.

Again, under the due diligence review, section 34171, subdivision (d)(2), provides that an

agreement between a city and its redevelopment agency is not an enforceable obligation unless entered into within two years of creation of the redevelopment agency. Section 34178, subdivision (b)(2), contains similar language. The only reasonable interpretation of this language is that the Legislature intended agreements between a city and a redevelopment agency entered into within two years of the agency's creation would remain enforceable. Agreements entered into after that would not be.

This construction is supported by several other provisions in the Dissolution Law. For example, section 34179.5, subdivision (c)(2), requires the due diligence review to identify any monies transferred by a redevelopment agency to its sponsor city ***after January 1, 2011,*** and document whether the transfer was required by an enforceable obligation. If not, the amount transferred is added back to the RDA's unencumbered balance available for allocation to other local entities.

The Dissolution Law did not take effect until June 28, 2011. By its plain language, section 34179.5 evidences the Legislature's intent that some transfers made ***before*** the Dissolution Law took effect are subject to reallocation to the local entities (transfers between January 1, 2011 and the law's June 28, 2011 effective date).

Section 34167.5 also evidences the Legislature's intent to retroactively invalidate certain transfers occurring within six months before enactment of Dissolution Law:

> Commencing on the effective date of the act adding this part [i.e., June 28, 2011], 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 . . . that created a redevelopment agency . . . , and the redevelopment agency. If such an asset transfer did occur during that period . . . the Controller shall order the available assets to be returned to the . . . the successor agency . . . . 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.

(§ 34167.5 [emphasis added].) Again, the Dissolution Law took effect June 28, 2011. Section 34167.5 thus evidences a clear intent to retroactively invalidate certain transactions that occurred

before the law's effective date.

The City cites a report by the Legislative Analyst in arguing the only transfers be subject to retroactive invalidation are transfers made without consideration or a preexisting agreement, intended to siphon tax increment monies back to the sponsor city in anticipation of the Dissolution Law. However, the court finds no ambiguity in the Dissolution Law. It clearly applies to any asset transferred after January 1, 2011, with no exception for transfers made with consideration or a preexisting agreement. (§ 34176.5.) There is thus no need to rely upon extrinsic evidence of the Legislature's intent. (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1119.)

5. Repayment of the loans was a "transfer"

The City argues the loan repayments were not "transferred" to it within the meaning of the Dissolution Law, and thus not subject to the due diligence review. This argument also fails.

The due diligence review identifies any assets "transferred" by the RDA to the City. (§ 34169.5(c).) For purposes of the due diligence review, "transferred" is defined as "the transmission of money to another party that is not in payment for goods or services or an investment or where the payment is de minimus." (§ 34179.5(b)(3).) The City argues the loans were an "investment" it made in the RDA and its various project. As such, repayment does not constitute a "transfer" of money. The argument does not persuade.

The due diligence review only looks at transfers ***from*** the RDA ***to*** the City. The City's initial transfer of funds to the RDA might arguably be seen as an investment. However, the question is the RDA's payment of the $41 million to the City. The RDA's payment of those funds back to the City cannot be deemed an "investment." The court thus finds the transfer of funds from the RDA to the City was a transfer within the meaning of section 34179.5.

6. Validity of the redevelopment plan and loan agreements are not at issue

The City argues the repayment cannot be challenged because the RDA's initial redevelopment plans are deemed valid. The RDA approved its redevelopment plans in 1983 and

1989. According to the City, the time to challenge the validity of those plans is long past; both plans are "final and conclusive" and not subject to judicial undoing. (See MPA at 16-18.) The City cites the validation procedures of sections 33501 and 33368.[10]

Neither section is applicable. This case does not challenge the validity of the redevelopment plans or the bonds issued to finance the plans. (Compare, e.g., *Hesperia Citizens for Responsible Development v. City of Hesperia* (2007) 151 Cal. App. 4th 653, 665 [holding city council's prior determination of blight in adopting redevelopment plan are conclusive in absence of validation action].)

The City similarly argues the various ***loan agreements*** are deemed valid, no longer subject to challenge. (MPA at 17:8-15.) Here the City cites Government Code section 53511, which authorizes an action to determine the validity of a local agency's contracts. Such a challenge must be brought within 60 days or is barred. (*City of Ontario v. Superior Court* (1970) 2 Cal.3d 335.)

Again, this case does not involve the validity of the City's loan agreements. DOF acknowledges the agreements were valid when made. Instead, the issue is whether the Legislature, in enacting the Dissolution Law, precluded voluntarily early repayment of the loans to avoid reallocation of the former RDA's assets. As discussed above, the Legislature did.

The City's argument the validation procedures in effect when the loans were made precludes the Legislature from thereafter modifying their terms would eviscerate much of the Dissolution Law and thwart the Legislature's goal of reallocating tax increment revenue to schools and other local entities. No authority is cited for this sweeping conclusion.

The City and the RDA are political subdivisions of the state and "exist only at the state's sufferance." (*Matosantos*, *supra*, 53 Cal.4th at 255-56.) The State has plenary power to grant its political subdivisions whatever rights it deems appropriate, including the right to enter into contracts. (*Id.*)

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[10] Section 33501 authorized an action to determine the validity of a redevelopment plan and bonds issued to finance the plan. Such an action must be brought shortly after the plan's approval. (§ 33500.) Section 33368 provides unless such a validation action is timely brought, "it shall thereafter be conclusively presumed that the project area is a blighted area . . . and that all prior proceedings have been duly and regularly taken." (§ 33368.)

The State also has the power to narrow, expand, alter, or abolish those rights. (*City of Trenton v. State of New Jersey* (1923) 262 U.S. 182, 186 [State at its pleasure may modify or withdraw any powers it grants municipal corporation]; *La Mesa, Lemon Grove and Spring Valley Irritation Dist. v. Halley* (1925) 197 Cal. 50, 61 ["So far as a municipality is an agency of government, it has no rights or powers, as between it and the state, the legislature may not modify or abrogate at pleasure."].)

As our Supreme Court explained nearly 100 years ago, the Constitution's prohibition against impairing contracts "does not extend to the waiver or modification of any rights accruing to the agencies of the state in their governmental capacity by action of the people through constitutional amendments or by legislative enactment." (*County of Tulare v. City of Dinuba* (1922) 188 Cal. 664, 669; see also *City of Trenton*, *supra*, 262 U.S. at 186 ["The power of the State, unrestrained by the contract clause..., over the rights and property of cities held and used for governmental purposes cannot be questioned."].)

7. DOF's approval of other loan repayments is irrelevant

The City argues DOF approved a similar loan repayment involving the City of Santa Clarita, and therefore must approve repayment of the City's loan here. The City cites no authority for the proposition DOF is required to treat all loan repayments the same.

The City asks the court to judicially notice the City of Santa Clarita's due diligence review and DOF's letter approving that review, but does not provide the loan agreements between the City of Santa Clarita and its redevelopment agency. (Req. for Jud. Not., Ex. W.) Without these loan agreements, the court cannot determine whether they are similar to the loan agreements at issue here. The court thus declines the City's request for judicial notice. (See *Matosantos*, *supra*, 212 Cal.App.4th at 1490 fn. 2.)

8. Disallowing accelerated repayment is not unconstitutional

The City argues the Dissolution Law is unconstitutional if interpreted to disallow early repayment of the loans. The City's arguments fail.

The City notes it used its general fund monies to make the loans to the RDA, using the City's sales, use and property tax revenues. The RDA repaid only principal – returning money to the City's general fund. The City argues reallocating these monies to other local entities will be allocating the City's sales, use and property tax revenues in violation of article XIII, sections 24, subdivision (b), 25.5, subdivision (a)(2), and 25.5, subdivision (a)(3), of the California Constitution. (Opening at 28:23 to 29:14.)

Section 24, subdivision (b), prohibits the Legislature from reallocating the proceeds of any locally imposed tax; section 25.5, subdivision (a)(2), prohibits the Legislature from changing the distribution of local sales and use taxes; and section 25.5, subdivision (a)(3), prohibits the Legislature from changing the allocation of property tax revenues among local agencies unless approved by a two-thirds vote.[11]

The Dissolution Law does not violate any of these provisions, because it did not reallocate the ***City's*** sales, use or property tax revenues. As DOF argues, the City itself allocated the proceeds of its local taxes when it loaned these funds to the RDA. (Opp. at 26:5-7.) The Dissolution Law merely provides how the ***RDA's*** asserts are to be allocated in winding up the RDA's affairs. Early repayment of the City's loans is not an enforceable obligation against the RDA, so these funds are available to other local entities. The fact the City loaned money to the RDA does not mean that in unwinding the RDA the Legislature is "allocating" ***City*** revenues.[12]

9. The constitutionality of the Dissolution Law's "offset" is not before the court

In its reply brief, the City raises a new constitutional challenge to the "offset" provisions of the Dissolution Law.

If the successor agency does not remit the $41 million to the county auditor-controller as directed by DOF, the Dissolution Law provides the funds may be recovered through an offset against the City's sales, use or property tax revenues. (§ 34179.6, subd. (h)(1)(A).) DOF may

[11] The Dissolution Law was passed by a simple majority.

[12] That the City would argue distribution of the ***RDA's*** assets is an allocation of the ***City's*** revenues underscores the "conjoined" nature of the City and the RDA, and the Legislature's concern such loans were not arm's-length transactions. (See *Matosantos, supra,* 53 Cal.4th at 258, fn. 12.)

also order the State Board of Equalization to offset the City's sales and use tax revenues. (*Id.*) Alternatively, the county auditor-controller may offset the City's property tax revenues. (*Id.*)

In its reply, the City argues for the first time the offset provisions are unconstitutional because they would violate article XIII, sections 24 and 25.5 of the California Constitution. (Reply at 25-29.) As a general rule, arguments raised for the first time in a reply brief will not be considered. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764; *American Drug Stores, Inc. v. Stroh* (1992) 10 Cal.App.4th 1446, 1453.) As the Third District Court of Appeal explained in the appellate context:

> Obvious considerations of fairness in argument demand that the appellant present all of his points in the opening brief. To withhold a point until the closing brief would deprive the respondent of his opportunity to answer it or require the effort and delay of an additional brief by permission. Hence the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.

(*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal. App. 3d 325, 335, fn. 8.)

The same considerations of fairness apply here. The court considers only those arguments the City raised in its opening brief. This is particularly true where the new argument asks the court to declare a statute unconstitutional. As Chief Justice John Marshall cautioned long ago:

> The question, whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. The court, when impelled by duty to render such a judgment, would be unworthy of its station, could it be unmindful of the solemn obligations which that station imposes. But it is not on slight implication and vague conjecture that the legislature is to be pronounced to have transcended its powers, and its acts to be considered as void. The opposition between the constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other.

(*Peck v. Fletcher* (1810) 10 US 87, 128.) The court will not entertain such an argument without the benefit of full briefing from all parties.[13]

Moreover, even if the City had raised this issue in its opening brief, this question is also not ripe for review. Neither DOF nor the county auditor-controller has taken any step to offset

[13] Because the City did not raise this argument in its opening brief, DOF does not address it in its opposition.

the City's tax revenues. DOF determined the $41 million repayment was not made pursuant to an enforceable obligation. If the successor agency fails to remit the $41 million to the county-auditor controller, and if DOF or the county auditor-controller then invoke the offset provisions, the constitutionality of those provisions would be ripe for review.

10. The Dissolution Law does not violate Home Rule

The City also argues the Dissolution Law violates article XI, section 5, of the California Constitution, commonly referred to as the "Home Rule Doctrine." The City is a charter city. (Spevacek Decl., ¶ 4.) Article XI, section 5, grants charter cities the right to govern themselves free of State intrusion in purely municipal affairs. (*State Building and Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555.) Our Supreme Court has held that how a city spends its tax dollars is a quintessentially municipal affair. (*Id.* 562.)

A. The State is not directing expenditure of the City's revenues

The City argues by disallowing early repayment of its loan, the State is unconstitutionally dictating how the City's tax dollars are spent and allocating the City's revenues to other local entities.

This argument fails for the same reason discussed above. By enacting the Dissolution Law, the Legislature has not dictated how the ***City*** must spend its tax dollars. Instead, the Dissolution Law merely provides that in winding up the former ***RDA***, these loans between the City and the RDA are not yet enforceable obligations, and thus the accelerated repayment was invalid. Again, the fact the loans involved the City's local tax revenues does not transform the Dissolution Law into a requirement the City spend its local taxes in any particular way.

B. Repayment of only 80 percent

At the hearing, the City advanced a new argument. Although the City's loans will eventually be repaid, twenty percent of the repayment must be used for affordable housing. (§ 34191.4, subd. (b)(2).) The City argues requiring twenty percent of its loan repayment be used

for a particular purpose violates the Home Rule Doctrine of Article XI, section 5, of the Constitution. However, this issue will not be ripe for review until the loans become enforceable obligations and the City is required to use twenty percent of the repayment for affordable housing.[14]

CONCLUSION

For the foregoing reasons, the petition for writ of mandate is denied.

Counsel for Respondents is directed to prepare a formal judgment and writ, incorporating this statement of decision as an exhibit; submit it to opposing counsel for approval as to form; and thereafter submit it to the court for signature and entry of judgment in accordance with Rule of Court 3.1312.

Dated: Sept 13, 2013

Allen Sumner
Judge of the Superior Court of California,
County of Sacramento

[14] As discussed, the court will not declare a statue unconstitutional based on arguments raised in a reply or at hearing without full briefing.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CITY OF LA QUINTA, a charter city; SUCCESSOR AGENCY TO THE DISSOLVED REDEVEOPMENT AGENCY OF THE CITY OF LA QUINTA	**Case Number: 34-2013-80001485**
vs.	**CERTIFICATE OF SERVICE BY MAILING (C.C.P. Sec. 1013a(4))**
ANA J. MATOSANTOS, in her official capacity as Direct of the Department of Finance; et al.	

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **STATEMENT OF DECISION AFTER HEARING DENYING PETITION FOR WRIT OF MANDATE** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, each of which envelopes was addressed respectively to the persons and addresses shown below:

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BOWIE ARNESON WILES & GIANNONE
4920 Campus Drive
Newport Beach, CA 92660
Attn: Wendy H. Wiles, Jeffrey A. Hoskinson

I, the undersigned Deputy Clerk, declare under penalty of perjury that the foregoing is true and correct.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

Dated: September 13, 2013

By: M. GARCIA,
Deputy Clerk

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State Controller's Office
Division of Audits
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