VALLEJO REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012

JOHN CHIANG
California State Controller

November 2014

JOHN CHIANG
California State Controller

November 26, 2014

Ron Millard, Interim Finance Director
Vallejo Redevelopment/Successor Agency
555 Santa Clara Street
Vallejo, CA 94950

Dear Mr. Millard:

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

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

Our review found that the RDA transferred $26,469,289 in assets after January 1, 2011, including unallowable transfers to the City totaling $655,000, or 2.47% of transferred assets. These assets must be turned over to the Successor Agency.

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

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

JVB/sk

cc: Daniel Keen, City Manager
City of Vallejo
Simona Padilla-Scholtens, CPA
Solano County Auditor-Controller
Erin Hannigan, Oversight Board Chair
Vallejo Redevelopment/Successor Agency
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
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Cecilia Michaels, Auditor-in-Charge
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

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

Our review found that the RDA transferred $26,469,289 in assets after January 1, 2011, including unallowable transfers to the City of Vallejo (City) totaling $655,000, or 2.47% of transferred assets. These assets must be turned over to the Successor Agency.

Background

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

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

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

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

H&S Code section 34167.5 states in part, ". . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency."

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

Objective, Scope, and Methodology

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

We performed the following procedures:

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

Conclusion

Our review found that the Vallejo Redevelopment Agency transferred $26,469,289 in assets after January 1, 2011, including unallowable transfers to the City of Vallejo totaling $655,000, or 2.47% of transferred assets. These assets must be turned over to the Successor Agency.

Details of our finding are described in the Finding and Order of the Controller section of this report.

Views of Responsible Official

We issued a draft review report on December 4, 2013. Deborah Lauchner, Finance Director, responded by letter dated January 13, 2014, disputing the review results. The City's response is included in this final review report as an attachment. Please note that the City's response references findings related to housing assets. This finding was eliminated due to a subsequent court ruling.

Restricted Use

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

Original signed by

JEFFREY V. BROWNFIELD, CPA
Chief, Division of Audits

November 26, 2014

Finding and Order of the Controller

**FINDING—
Unallowable asset transfers to the City of Vallejo**

The Vallejo Redevelopment Agency (RDA) made unallowable asset transfers of $655,000 to the City of Vallejo (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.

Unallowable asset transfers were as follows:

In 2011, the RDA made four payments to the City on loans the City provided to the RDA over several years. The loan repayments totaled $655,000.

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

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers in the amount of $655,000, and turn over the assets to the Successor Agency.

Vallejo Successor Agency Response

> The Successor Agency disputes the order to reverse the repayment of loans to the City and the transfer of the two parcels of land that were turned into parking structures, stating the structures are government use properties.

See Attachment for the City's complete response.

SCO's Comment

The SCO's authority under H&S Code section 34167.5 extends to all assets transferred after December 31, 2010, by the RDA to the city or county, or city and county that created the RDA, or any other public agency. This responsibility is not limited by the other provisions of the RDA dissolution legislation. Additionally, H&S Code section 34167.5 states that if such an unallowable transfer occurs, the Controller shall order the return of those assets to the Successor Agency.

The Department of Finance issued a Finding of Completion to the Successor Agency on October 16, 2013. The Successor Agency may place loan agreements between the RDA and the City on the Recognized Obligation Payment Schedule as an enforceable obligation, provided that the Oversight Board finds that the loan was for legitimate redevelopment purposes.

With regards to the parking structures, the City has provided additional documentation. The Finding and Order of the Controller have been modified accordingly.

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

Current assets		
Principle and interest payments on long-term loans	$	655,000
Total unallowable asset transfers	$	655,000

Attachment—
City's Response to
Draft Review Report

City of VALLEJO California

Office of the City Manager · 555 Santa Clara Street · Vallejo · CA · 94590 · 707.648.4576

January 13, 2014

Elizabeth Gonzalez
Chief, Local Government Compliance Bureau
State Controller's Office
Division of Audits
PO Box 942850
Sacramento, CA 94250-5874

Dear Ms. Gonzalez:

The City of Vallejo has reviewed the draft Asset Transfer Review Report for the period January 1, 2011, through January 31, 2012. Below is the City of Vallejo management response to the findings:

Finding 1 – The Vallejo Redevelopment Agency (RDA) transferred $22,015,203 in assets to the City of Vallejo (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.

In 2011, the RDA made four payments to the City on loans the City provided to the RDA over several years. The loan repayments totaled $655,000.

> **City Response:** The City disputes your order to reverse these transactions. The City agrees it paid these obligations. These obligations were paid prior to dissolution during the initial Enforceable Obligation Payment Schedule ("EOPS") period. The City Council's Adopted Budget is the obligating document and the City contends the loans were for goods and services rendered to the Agency, were legal when they were made and were appropriate to pay as budgeted.
>
> The Oversight Board meeting is scheduled to meet February 20, 2014, and a formal resolution will be presented to the Oversight Board ratifying the transfer of these assets pursuant to Health and Safety Code Secs. 34176 and 34181. We request that this finding be removed from the report or the report not be issued until we provide the State Controller with a copy of the Oversight Board's adopted resolution.

The RDA transferred two parcels of land to the City (APN 055-170-520 and APN 055-170-360) with an original value of $442,366. It was further noted that these two parcels were purchased as vacant land and today are parking structures the City plans to rent out.

> **City Response:** The City disputes your order to reverse the capital assets transfer of $21,360,203. It is our understanding that one of the permissible reasons that an asset transfer would not be subject to reversal is if the property was constructed and used for a governmental purpose (H&S Section 34177(e)(3), Section 34181(a)). The transfer of

the two parcels APN 0055-170-520 and APN 0055-170-360 occurred pursuant to a Disposition and Development Agreement (DDA), and a Transfer Agreement with the San Francisco Bay Area Water Emergency Transit Agency (WETA) to facilitate the construction and operation of a parking garage to provide public parking for the Baylink Ferry service.

In October 2000, the Redevelopment Agency entered into a DDA with the Callahan Property Company as the Master Developer of certain waterfront properties. Department of Finance approved this DDA as an enforceable obligation and the Agency funding obligation of $12,000,000 appears on the Successor Agency ROPS under the Vallejo Station Parking Garage. Under the terms of the DDA, the Redevelopment Agency was required to transfer the two parcels to the City of Vallejo for construction of the Vallejo Station Parking Garage.

On January 12, 2010, the Redevelopment Agency and the City of Vallejo approved the transfer of these two parcels to allow the construction of the garage. The City constructed the garage with a variety of federal grants, state grants and other funding sources and is the owner of the garage. The recording of the grant deed transferring the parcels did not occur until September 20, 2011, due to a delay in completing the final legal descriptions based on the completed parking garage footprint. The federal grants require the City maintain ownership of the facilities built with the grant funds.

As a federal grant recipient, the City of Vallejo undertook a commitment to comply with the federal government's grant regulations. The regulations are contained in the U.S. FTA's Master Agreement For Federal Transit Administration Agreements authorized by 49 U.S.C. chapter 53, Title 23, United States Code (Highways), the National Capital Transportation Act of 1969, as amended; the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended; or other Federal laws that FTA administers. Vallejo entered into this Master Agreement by virtue of becoming a federal grant recipient. Under Section 19 of that Master Agreement, Vallejo agreed to not encumber or transfer the property, and to keep it for the transportation–related use which it currently has, and for which it received federal funds. The following section of the Master Agreement sets forth Vallejo's responsibilities with regards to the parking garage parcels; in particular19 (f) and (g) compelled the transfer to Vallejo (the recipient) once the grant funds attached:

Section 19. Use of Real Property, Equipment, and Supplies.
The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to

support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also consents to FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.
2) Alternative Fueling Facilities. As authorized by 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if the:
    i. Incidental use does not interfere with the Recipient's Project or public transportation operations;
    ii. Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;
    iii. Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and
    iv. Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. The Recipient agrees to maintain satisfactory continuing control of Project property as follows:
   1) Written Transactions. The Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.
   2) Oral Transactions. The Recipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.
   3) Other Actions. The Recipient agrees that it will not take any action adversely affecting the Federal interest in or impair the Recipient's continuing control of the use of Project property.

g. Transfer of Project Property. The Recipient understands and agrees as follows:
   1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) and (2).
   2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer, title to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement.
   3) Leasing Project Property to Another Party. If the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(g)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.
   1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.
   2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:
      i. Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

ii. Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined by the ratio of the Federal assistance awarded for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. The Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.
2. Real Property. The Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.
3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with respect to the preservation of Project property withdrawn from appropriate use.

iii. Financial Obligation to the Federal Government. The Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the Project property prematurely withdrawn from use; or
2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:
   1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
   2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

A copy of the relevant provision of the Master Agreement is attached to this letter for ease of reference.

In addition, these two parcels are subject to the Transfer Agreement between the City of Vallejo and WETA, which requires at Section 11.6 that the City provide 1200 spaces of public parking and other waterside facilities for operations of the Baylink Ferry service. The Transfer Agreement requires the City to own the 1200 parking spaces and have the sole responsibility for the operation and maintenance of the parking garage. The operations and maintenance costs will be funded by a parking revenue system. The Agency provided the land for the spaces and additional public funds were assembled through a series of grants for the construction of the public parking garage. Phase 1 of the parking garage has been completed. Pursuant to the Transfer Agreement, Sec. 11.6(b), "the City shall continue to make available sufficient parking," with approximately 700 parking spaces in the structure and another 500 parking spaces provided on an adjacent surface lot. Phase 2 of the parking structure will be completed following the relocation of a U. S. Post Office and identification of funding sources. Under the terms of the Transfer Agreement, implementation of existing redevelopment agreements and plans will not negatively impact WETA operations or provision of the public parking. A copy of the relevant provisions of the Transfer Agreement, officially titled "Ferry Service Operations Transfer Agreement by and between City of Vallejo and San Francisco Bay Area Water Emergency Transit Authority," is attached for ease of reference.

The Successor Agency legally and appropriately transferred APN 0055-170-360 and 0055-170-520 pursuant to an approved Enforceable Obligation for the construction and operation of a parking structure to provide public parking for Baylink Ferry service

Finding 2 – The RDA made unallowable asset transfers of $ 12,782,588 to the Entity Assuming the Housing Functions. The asset transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

The RDA transferred $148,354 in unencumbered cash, $2,466,222 in interest receivables, and $10,168,012 in loan receivables to the Entity Assuming the Housing Functions on February 1, 2012.

City Response:

The City disputes your order to reverse these transfers. Upon conclusion of the Meet and Confer process, the City remitted check number 717461 in the amount of $148,354 to Solano County on January 3, 2013.

The City disputes your order to reverse the transfers of housing interest and loan receivables amounting to $12,634,234. Prior to the dissolution of the Redevelopment Agency, the City elected not to retain the housing assets and functions previously performed by the Redevelopment Agency per Resolution # 12-001 dated January 10, 2012, as permitted under Section 34176(b). This statute provides that upon redevelopment agency dissolution, if a city does not retain the authority to perform housing functions previously performed by a redevelopment agency, all rights, powers, assets, duties, and obligations associated with the housing activities of the agency, excluding enforceable obligations retained by the successor agency and any amounts in the Low and Moderate Income Housing Fund, shall be transferred to the Entity assuming the housing functions. The draft report bases its conclusion that the housing transfers were "unallowable" on the fact that at the time the housing assets were transferred to the Entity assuming the housing functions, the Vallejo Oversight Board had not approved the transfer. However, the Oversight Board was not in existence on February 1, 2012, when the Redevelopment Agency dissolved and the transfer took place. The Oversight Board was not created until May 2012, in accordance with the timeline for oversight board establishment set forth in the statute. Further, the Vallejo Oversight Board did approve the housing asset transfer on November 15, 2012.

The Oversight Board will meet on February 20, 2014, and a formal resolution will be presented to the Oversight Board ratifying the transfer of these housing assets pursuant to Health and Safety Code Secs. 34176 and 34181. We request that this finding be removed from the report or the report not be issued until we provide the State Controller with a copy of the Oversight Board's adopted resolution.

Finally, the draft report recounts that at the exit conference, the SCO stated that the final report would include the views of responsible officials. We do not see these views reflected in the draft report, and respectfully request that they be included in the final report.

Thank you in advance for reviewing and considering our comments.

Sincerely,

DANIEL E. KEEN
City Manager

Attachments:

- USA Department of Transportation Federal Transit Administration, Master Agreement, October 2005
- Ferry Service Operations Transfer Agreement between City of Vallejo and San Francisco Bay Area Water Emergency Transportation Authority, May 2012

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the National Capital Transportation Act of 1969, as amended,
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,
the Transportation Equity Act for the 21st Century, as amended,
or other Federal laws that FTA administers.

FTA MA(12)
October 1, 2005

http://www.fta.dot.gov/16874_16882_ENG_HTML.htm

Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

f. Restrictions on Access to Patent Rights. Nothing in this Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

g. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data developed without any Federal funding or support to the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

h. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or by subsequent Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal law providing access to such records).

Section 19. Use of Real Property, Equipment, and Supplies.

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any

Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also consents to FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.

(2) Alternative Fueling Facilities. As authorized by 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if the:

(1) Incidental use does not interfere with the Recipient's Project or public transportation operations;

(2) Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(3) Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(4) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. The Recipient agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. The Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

(2) Oral Transactions. The Recipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.

(3) Other Actions. The Recipient agrees that it will not take any action adversely affecting the Federal interest in or impair the Recipient's continuing control of the use of Project property.

g. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a public body to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) and (2).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer, title to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. If the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assure that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(g)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined by the ratio of the Federal assistance awarded for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. The Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Recipient agrees that the fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of Project property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with respect to the preservation of Project property withdrawn from appropriate use.

(c) Financial Obligations to the Federal Government. The Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the Project property prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

j. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Recipient agrees that Project closeout by FTA will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

Section 20. Insurance.

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

a. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

b. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of $10,000 or more.

Section 21. Relocation.

When relocation of individuals or businesses is required, the Recipient agrees as follows:

a. Relocation Protections. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally

FERRY SERVICE OPERATIONS TRANSFER AGREEMENT

by and between

CITY OF VALLEJO

and

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

FINAL 5/24/2012

right on behalf of City shall at all times be accompanied by a WETA representative with appropriate MARSEC credentials. In the event of an emergency, City shall have the right to enter the Rights Area and the Temporary Rights Area, as the case may be, without prior notice to WETA, provided that City shall be accompanied by a law enforcement officer or a MARSEC credentialed person as required by MARSEC, and City shall advise WETA of its entry as soon as reasonably practicable and City shall limit its activities to those necessary to remove the immediate threat to public health and safety. City's exercise of the right of entry provided under this Section 11.5(a)(ii)(C) shall not be construed or deemed a breach of WETA's rights under this Agreement.

(D) Improvements and Alterations. WETA shall have the right to carry out capital improvement projects required to maintain the Waterside Assets, subject to the Redevelopment Agreements, applicable Law and (including the Waterfront Plan and all existing entitlements), upon securing all necessary authorizations, including any authorizations or written agreements required by City for similar projects in the ordinary course of business.

(E) Surrender. Upon expiration or earlier termination of this Agreement, and subject to City's and WETA's successors' rights to reacquire or acquire the Acquired Assets pursuant to Section 11.3(g), WETA shall surrender to City the Rights Area and the Temporary Rights Area and any alterations existing on the Effective Date (if the same are still existing) and improvements in at least as good condition as existing on the Closing Date (except for ordinary wear and tear). The Rights Area and the Temporary Rights Area shall be surrendered clean, free of vessels, debris, waste and any Hazardous Materials for which WETA is otherwise responsible under the terms of this Agreement, and free of all liens and encumbrances imposed or allowed by or through WETA or otherwise attributable to WETA or its operation of the Service, except for any applicable Grant Agreements (provided, however that any Grant Claim shall be handled as provided in Section 11.3(g), Section 9.5 and Section 9.8). If WETA fails to surrender the Rights Area and the Temporary Rights Area as required by this Section, WETA shall indemnify defend and hold harmless City from any damages resulting from such failure in accordance with Sections 9.5 hereof. WETA's obligation under this Section shall survive the expiration or earlier termination of the Term. Upon expiration or earlier termination of this Agreement, City may elect to retain or dispose of WETA's personal property and any alterations and improvements that WETA has installed in the Rights Area or the Temporary Rights Area that WETA fails to remove within ten (10) days or receipt of notice from City of City's intention. WETA shall have the right to enter the Rights Area and the Temporary Rights Area to remove WETA's personal property at any time prior to the expiration of such ten (10) day notice period. WETA's personal property not removed by WETA within such ten (10) day notice period shall be deemed abandoned, and WETA waives all Claims against City for any damages resulting from City's retention, removal and disposition of such property. WETA shall be liable to City for all costs incurred by City in storing, removing and disposing of WETA's abandoned property, and in repairing any damage to the Rights Area, the Temporary Rights Area and Landside Assets resulting from such removal. WETA agrees that City may elect to sell abandoned property and offset the proceeds against the costs incurred by City to store, remove and dispose of such property without notice to WETA. WETA hereby waives the benefits of California Civil Code Section 1993 to the extent applicable.

Section 11.6 Parking.

(a) Prior to completion of the Parking Structure. City shall continue to provide free parking (in the City Lot and/or on-street) for ferry patrons until Phase 1 of the Parking Structure is complete and available for ferry patron use. Until such time as the Phase 1 Parking Structure is available for ferry patrons' use, WETA shall reimburse City for the actual out-of-pocket costs incurred by City for maintaining the City Lot, including such items as general pavement maintenance, sweeping services, lighting and landscaping, consistent with costs currently charged by City to the Service. Detailed provisions with respect to the process for establishing a WETA-approved budget for such expenses as part of the calculation of WETA's Triple Net Cost payment obligation, are set forth in Section 11.7.

(b) Upon Completion of Phase 1 of the Parking Structure. City shall continue to make available sufficient parking (not to exceed 1,200 spaces) for ferry patrons, based upon WETA's projected peak period ridership. Approximately 700 spaces will be in the Parking Structure with the balance (up to 500) in adjacent paved surface lots or on the street. Once Phase 1 of the Parking Structure is complete and available for ferry patron parking (anticipated to occur in June, 2012), City will implement a Parking Management Plan & Parking Access Revenue Control System Plan and will likely restrict ferry patron parking to Phase 1 of the Parking Structure and designated surface parking lots or on the street in the vicinity of the Parking Structure. Other on-street parking and parking in other paved lots in the vicinity of the Ferry Landing Area will likely be restricted (probably with 3± hour time limits) and/or subject to parking fees.

(c) Phase 2 of Parking Structure. Subject to the availability of funding, it is anticipated that Phase 2 of the Parking Structure will be completed following relocation of a U.S. Post Office. At present it is anticipated that, in connection with Phase 2 of the Parking Structure, certain Agency and private funds will be utilized for construction of the deck on which a hotel/conference center will be constructed. City shall continue to make available sufficient parking (not to exceed 1,200 spaces) for ferry patrons at all times, including during construction of Phase 2, based upon WETA's projected peak period ridership from time to time during the Term. Upon completion of the Phase 2 of the Parking Structure, it is anticipated that all such parking will be in the Parking Structure.

(d) Parking Charges. City shall be solely responsible for operating and maintaining the Parking Structure, at City's sole cost and expense. As such, City reserves the right to implement a downtown parking management plan, restrict street parking as necessary and charge ferry patrons a fee for parking at a level sufficient to recover operation, maintenance and capitalized maintenance costs. However, City and WETA staff share the concern that charging for parking could be a disincentive for people to ride the ferry and agree to work together to identify options to charging for parking – particularly as it relates to the monthly riders. To that end, while City shall have sole discretion in setting parking fees (subject to limitations imposed by funding sources restricting parking fees to amounts necessary to recover City's costs of operating of the Parking Structure) if City determines to impose parking charges, City shall advise WETA in advance of the initiation of the initial parking fees and any fee changes, and upon WETA's request shall meet and confer with WETA to discuss the impact of parking fees on the Service. WETA may elect to subsidize parking costs in order to offset potential impacts of parking fees on ferry patrons and the Service. Subject to the availability of

funding, City shall work with WETA to implement Clipper card or similar technology in the Parking Structure in order to facilitate ferry patron payment of parking fees.

(e) Agency Obligations. All parking facilities and areas are located in City's Merged Waterfront-Marina Vista-Central Vallejo Redevelopment Project Area ("**Merged Project Area**") but are owned by City. This Agreement and WETA's rights hereunder shall be subject to pre-existing rights and agreements (indicated on Exhibit P, copies of which City has provided to WETA for review) and future amendments to existing developer agreements, to the extent permitted by applicable Law ("**Redevelopment Agreements**"), provided that, to the extent within Agency's control, such amendments do not materially negatively impact any rights of WETA under this Agreement, any Ancillary Documents or exhibits hereto, or applicable Law. Subject to the rights of WETA under this Agreement, City and/or Agency shall retain all rights to use and/or redevelop such areas consistent with the Redevelopment Plan for the Merged Project Area. City shall provide, and shall ensure that the Agency provides, that any agreement pursuant to which any third party that is assigned, transferred, contracted to operate, or otherwise conveyed any interest with respect to the Parking Structure shall include and be subject to the provisions of the same WETA rights with respect to the Parking Structure that are provided to WETA pursuant to this Agreement, and shall provide that WETA shall be a third party beneficiary for purposes of enforcing such rights.

Section 11.7 City Services and Cost Reimbursement.

(a) City Services. It is anticipated by both WETA and City that during the Term, City will arrange for certain services to be provided for the benefit of the Service on an annual basis, potentially including such items as City Lot maintenance, security guard services, provision of utilities to Waterside Assets, capital project and grant administration services. City and WETA shall work to develop a scope of work and associated budget for these services prior to the beginning of each fiscal year as further defined in Section 11.7(b).

(b) City Services Budget Approval Process. During the Term, no later than April 1st of each year, City shall submit to WETA for its review and approval, a proposed schedule of operations, maintenance and project support services and related annual budget based upon City's best estimate of the actual Triple Net Costs that City anticipates it will incur in the next fiscal year with respect to the Service for which City is entitled to reimbursement hereunder. Such proposed budget shall include (i) reasonable overhead expenses for City staff time directly and exclusively attributable to ongoing project and grant administration for the Capital Projects identified in Exhibit E computed on the same basis as costs that are generally allocated within City; (ii) City's actual out-of-pocket costs incurred to maintain the City Lot until completion of Phase 1 of the Parking Structure, including general pavement maintenance, sweeping services, and lighting and landscaping, consistent with costs charged by City to the Service as of the Effective Date; (iii) actual, agreed-upon costs that City incurs at WETA's request for provision of non-MARSEC Security for the benefit of the Service; (iv) the estimated annual cost to be incurred by City to provide electric, water, sewage telephone or other utilities or similar services to the Waterside Assets; and (v) the actual, agreed upon costs incurred by City directly attributable to the Service, including reasonable overhead expenses for City staff or time directly and exclusively attributable to the Service (provided such charges are not assessed as Additional Rent under the Ferry Building Lease, the Existing Ferry Facilities Sublease and/or the

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