

ANTIOCH DEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

February 2014



JOHN CHIANG
California State Controller

February 26, 2014

Dawn Merchant, Finance Director
Antioch Development/Successor Agency
P.O. Box 5007
Antioch, CA 94531-5007

Dear Ms. Merchant:

Pursuant to Health and Safety Code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Antioch Development Agency (RDA) to the City of Antioch (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 it 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 agencies have been reversed.

Our review found that the RDA transferred \$33,784,033 in assets after January 1, 2011, including unallowable transfers totaling \$23,965,885 (\$4,940,245 to the City and \$19,025,639 to the Entity Assuming the Housing Functions), or 70.94% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers were made:

- On August 20, 2012, the Oversight Board approved \$420,499 of the transferred assets because the assets are used for government purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-05.
- On October 15, 2012, the Oversight Board approved the City as the Entity Assuming the Housing Functions to retain the transfer in the amount of \$19,025,639 because the assets are used for housing purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-07.
- On June 30, 2013, the City transferred \$2,660,788 in capital assets to the Successor Agency.

The remaining \$1,858,958 in unallowable transfers must be turned over to the Successor Agency.

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/kw

Attachment

cc: Brian Kalinowski, Chair
Oversight Board
Antioch Development/Successor Agency
Robert R. Campbell, Auditor-Controller
Contra Costa County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth Gonzalez, Bureau Chief
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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Antioch Development 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 \$33,784,033 in assets after January 1, 2011, including unallowable transfers totaling \$23,965,884 (\$4,940,245 to the City of Antioch (City) and \$19,025,639 to the Entity Assuming the Housing Functions), or 70.94% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers were made:

- On August 20, 2012, the Oversight Board approved \$420,499 of the transferred assets because the assets are used for government purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-05.
- On October 15, 2012, the Oversight Board approved the City as the Entity Assuming the Housing Functions to retain the transfer in the amount of \$19,025,639 because the assets are used for housing purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-07.
- On June 30, 2013, the City transferred \$2,660,788 in capital assets to the Successor Agency.

The remaining \$1,858,958 in unallowable transfers must be turned over to the Successor Agency.

Background

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

ABX1 26 prohibited RDAs from engaging in new business, established mechanisms and timelines for dissolution of the RDAs, and created RDA Successor Agencies 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 RDA, the City, and/or other public agencies. By law, the SCO is required to order that such assets, except those that already had been committed to a third party prior to June 28, 2011, the effective date of ABX1 26, be turned over to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objective, Scope, and Methodology

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

We performed the following procedures:

- Interviewed Successor Agency personnel to gain an understanding of the Successor Agency operations and procedures.
- Reviewed meeting minutes, resolutions, and ordinances of the Antioch City Council and the RDA.
- 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 Antioch Development Agency transferred \$33,784,033 in assets after January 1, 2011, including unallowable transfers totaling \$23,965,884 (\$4,940,245 to the City of Antioch and \$19,025,639 to the Entity Assuming the Housing Function), or 70.94% of transferred assets.

However, the following corrective actions have been taken since the unallowable transfers occurred:

- On August 20, 2012, the Oversight Board approved \$420,499 of the transferred assets because the assets are used for government purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-05.

- On October 15, 2012, the Oversight Board approved the City as the Entity Assuming the Housing Functions to retain the transfer in the amount of \$19,025,639 because the assets are used for housing purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-07.
- On June 30, 2013, the City transferred \$2,660,788 in capital assets to the Successor Agency.

The remaining \$1,858,958 in unallowable transfers must be turned over to the Successor Agency.

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

Views of Responsible Official

We issued a draft review report on October 2, 2013. Dawn Merchant, Finance Director, responded by letter dated October 14, 2013. The City'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, the Successor Agency, the Oversight Board, the Entity Assuming the Housing Functions, 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

February 26, 2014

Findings and Orders of the Controller

FINDING 1— Unallowable RDA asset transfers to the City of Antioch

The Antioch Development Agency (RDA) made unallowable asset transfers of \$4,940,245 to the City of Antioch (City). All of 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:

- On March 8, 2011, the RDA transferred \$3,081,287 in capital assets to the City. To accomplish this transfer, the City and the RDA entered into an agreement under Resolution ADA-442 and Meeting Agenda Item 3A.
- On March 22, 2011, the RDA transferred \$987,500 in bond proceeds to the City for the Markley Creek Culvert Crossing Project.
- From January 1, 2011, through January 31, 2012, the RDA made four transfers, totaling \$831,458, to the City as loan repayment for the Antioch Municipal Marina.
- From January 1, 2011, through January 31, 2012, the RDA made three transfers, totaling \$40,000, to the City for the Monitoring Wells Program.

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 governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset...

However, the following corrective actions have been taken since the unallowable transfers were made:

- On August 20, 2012, the Oversight Board approved \$420,499 of the transferred assets because the assets are used for government purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-05.

- On June 30, 2013 the City transferred \$2,660,788 in capital assets to the Successor Agency.

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfer of the above assets, described in Schedule 1, in the amount of \$1,858,958, and turn them over to the Successor Agency.

The Successor Agency is directed to properly dispose of those assets in accordance with H&S Code section 34177(d) and (e) with approval by the Oversight Board pursuant to H&S Code section 34181(a).

City's Response

On March 22, 2011, the ADA transferred \$1,000,000 in bond proceeds (from the issuance of the Antioch Public Financing Authority 2002 Lease Revenue Bonds) to the City. The former ADA is responsible for repayment of these bonds and is also a party to the financing authority. Bond proceeds were placed with the redevelopment agency in 2008 to be held for future redevelopment projects and \$1,000,000 was subsequently transferred to the City in 2011 to finance the Markley Creek Culvert Crossing Project. Health and Safety Code Section 34167.5 states that the Controller can order the reversal of transfers if the funds have not been contractually committed to a third party. These funds were contractually committed to a third party and have been spent by the third party and are not available to be returned to the Successor Agency.

SCO's Response

The SCO partially agrees with the City. The Antioch Public Financing Authority 2002 Lease Revenue Bonds were held for future redevelopment projects; however, the bonds were not specific to the Markley Creek Culvert Crossing Project. Pursuant to H&S Code section 34167.5, any asset transfers by the RDA to a city, county, city and county or any other local public agency after January 1, 2011, that were not contractually committed to a third party prior to June 28, 2011, must be turned over to the Successor Agency for disposition in accordance with H&S Code sections 34177. Although the funds were contractually committed to third parties, all but one contract was entered into after June 28, 2011. Only the contract, dated June 15, 2011, in the amount of \$12,500, is allowable.

The finding is adjusted to reflect that \$987,500 in assets should be turned over to the Successor Agency.

City's Response

From January 1, 2011 through January 31, 2012, the ADA made transfers totaling \$831,458 to the City to meet loan conditions as specified in a loan between the City, Antioch Development Agency and the State Department of Boating and Waterways. The original loan agreement was executed in 1984 and committed the ADA to depositing tax increment in the City's Marina Fund to meet loan and operating

obligations of the City's municipal Marina. The loan was amended in 2002 and required that the ADA deposit a minimum of \$2.5 million over ten years and maintain a capital reserve for the Marina. The transfers were done to meet these requirements in order to avoid a default under the loan agreement. The loan agreement constitutes an enforceable obligation of the Successor Agency. Additionally, the funds at issue were deposited in the reserve fund as required by the loan agreement. It should also be noted that the Department of Finance, in its final determination of the amounts owed on the Other Funds Due Diligence Review determined that a portion of the funds were transferred on January 1, 2011 and therefore outside of the scope of the DDR. These funds should not be subject to the Controller's Order.

SCO's Response

Pursuant to H&S Code section 34167.5, the 1984 contract and 2002 restructure are not sufficient to obligate the RDA transfers to the City. This includes the first payment posted on January 1, 2011, because the journal entry was dated February 15, 2011, making this payment within the review scope.

The finding and Order of the Controller remains as stated.

City's Response

From January 1, 2011 through January 31, 2012, the ADA made transfers totaling \$40,000 to the City for the Monitoring Wells Project. These funds were approved by both the City Council and Antioch Development Agency in the adopted budget for the City and Development Agency prior to redevelopment dissolution. Funds were committed to a third party contractor and subsequently spent on the project. Furthermore, the Department of Finance approved \$18,000 of the transfer on the first ROPS reporting period. . . . Although the Successor Agency continues to disagree with the Department and the Controller on the remaining \$22,000, the Controller's report should at a minimum reflect that \$18,000 of these funds were transferred in accordance with an enforceable obligation and therefore are not subject to the Controller's order.

SCO's Response

Regardless of determinations made by other entities, H&S Code section 34167.5 authorizes the Controller to order the return of any asset transferred to a city, county, city and county, or any other public agency after January 1, 2011. No documentation has been provided showing that any portion of these funds were contractually committed prior to June 28, 2011.

The finding and Order of the Controller remains as stated.

**FINDING 2—
Unallowable RDA
asset transfers to the
Entity Assuming the
Housing Functions**

On February 1, 2012, the RDA transferred a total of \$19,025,639 in assets to the Entity Assuming the Housing Functions. Those assets consisted of \$14,436,459 in loans receivable, \$3,537,849 in long term receivables, \$945,007 in encumbered cash, and \$106,324 in unencumbered cash.

Pursuant to H&S Code section 34175(b) the RDA is required to transfer all assets, including housing assets, to the Successor Agency.

H&S Code section 34175(b) states that all assets, properties, contracts, leases, books and records, buildings, and equipment of the former redevelopment agency are transferred on February 1, 2012, to the control of the successor agency, for administration pursuant to the provisions of this part. This includes all cash or cash equivalents and amounts owed to the redevelopment agency as of February 1, 2012.

Additionally, H&S Code section 34181(c) requires the oversight board to direct the Successor Agency transfer housing assets pursuant to Section 34176.

Also, pursuant to H&S Code section 34177(d) the Successor Agency is to:

Remit unencumbered balances of redevelopment agency funds to the county auditor-controller for distribution to the taxing entities, including, but not limited to, the unencumbered balance of the Low and Moderate Income Housing Fund of a former redevelopment agency...for allocation and distribution...[in accordance with]...Section 34188.

However, the following corrective actions have been taken since the unallowable transfers were made:

- On October 15, 2012, the Oversight Board retroactively approved \$19,025,639 of the transferred assets (including \$106,324 in unencumbered cash assets) because the assets are used for housing purposes. To accomplish this, the Oversight Board passed and adopted Resolution 2012-07.
- On December 17, 2012, the Entity Assuming the Housing Functions remitted the \$106,324 in Oversight Board-approved unencumbered cash directly to the Contra Costa County Auditor-Controller based on direction from the California Department of Finance (DOF).

Order of the Controller

Pursuant to H&S Code section 34167.5, the Entity Assuming the Housing Functions would have been ordered to return the assets, in the amount of \$19,025,639, to the Successor Agency. However, as the Oversight Board retroactively approved the transfer of \$19,025,639 in assets (including \$106,324 in unencumbered cash), and \$106,324 in assets have already been remitted directly to the Contra Costa County Auditor-Controller, no further action is necessary in relation to the transfer of these assets.

Note that the DOF must approve the Oversight Board's decision in this matter. If the DOF does not approve the decision, then the Entity Assuming the Housing Functions is ordered to transfer the assets to the Successor Agency pursuant to H&S Code section 34167.5.

City's Response

As stated in the finding, the Oversight Board to the Successor Agency passed Resolution 2012-07 retroactively approving the transfer of housing assets to the Successor Housing Agency. In terms of the Order of the Controller, we would like to clarify that the Department of Finance did not object to the Oversight Board action within the required statutory timeframe, therefore the Oversight Board action took effect in accordance with Health and Safety Code Section 34179(h).

SCO's Response

The SCO agrees that no further action is necessary.

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

| Description | Date | Finding Values ¹ | Adjustments to SCO Order | SCO Order |
|---|-----------------|--------------------------------|-----------------------------|---------------------|
| Transfer of capital assets | March 8, 2011 | \$ 3,081,287 | | |
| Transfer of bond proceeds | March 22, 2011 | 987,500 | | |
| Transfers of cash assets for loan repayment | Various | 831,458 | | |
| Transfers of cash assets for city program | Various | 40,000 | | |
| Total unallowable transfers | | <u>4,940,245</u> | | |
| Capital assets approved under Resolution 2012-05 | August 20, 2012 | | \$ (420,499) | |
| Capital assets transferred to Successor Agency | June 30, 2013 | | <u>(2,660,788)</u> | |
| Total adjustments | | | <u>(3,081,287)</u> | |
| Total unallowable asset transfers subject to H&S Code section 34167.5 | | | | <u>\$ 1,858,958</u> |

¹ Rounded.

**Schedule 2—
Unallowable RDA Asset Transfers to
the Entity Assuming the Housing Functions
January 1, 2011, through January 31, 2012**

| Description | Date | Finding Values ¹ | Adjustments to SCO Order | SCO Order |
|--|------------------|-----------------------------|-----------------------------|--------------------|
| Loans receivable | February 1, 2012 | \$ 14,436,459 | | |
| Long term receivables | February 1, 2012 | 3,537,849 | | |
| Encumbered cash | February 1, 2012 | 945,007 | | |
| Unencumbered cash | February 1, 2012 | <u>106,324</u> | | |
| Total unallowable transfers | | <u>19,025,639</u> | | |
| Oversight Board approval under Resolution 2012-07 | October 17, 2012 | | <u>\$ (19,025,639)</u> | |
| Total adjustments | | | <u>(19,025,639)</u> | |
| Total unallowable transfers remaining | | | | <u><u>\$ —</u></u> |

¹ Rounded.

**Attachment—
City of Antioch’s Response to
Draft Review Report**



DEPARTMENT OF
FINANCE

EDMUND G. BROWN JR. - GOVERNOR

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

May 1, 2013

Ms. Dawn Merchant, Finance Director
City of Antioch
PO Box 5007
Antioch, CA 94531-5007

Dear Ms. Merchant:

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated April 1, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Antioch Successor Agency (Agency) submitted an oversight board approved OFA DDR to the Finance on January 14, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on April 1, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on April 10, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- Transfers totaling \$871,458 are partially disallowed as discussed below:
 - Transfers made to the City of Antioch (City) totaling \$831,458 to fulfill a loan agreement between the California Department of Boating and Waterways, the City, and the Agency. The Agency contends the agreement is an enforceable obligation because the loan agreement and the debt repayment report obligated the former Redevelopment Agency (RDA) to repay the State Department of Boating and Waterways 1984 loan. Our review indicates the following:

According to documentation provided by the Agency, one payment totaling \$62,500 was made on January 1, 2011. Per HSC section 34179.5 (c), the payment should not have been included in the DDR, the Agency will be permitted to retain these funds and Finance is reversing its original adjustment to the OFA balance for this amount.

Per Article VIII of the Terms and Conditions of the 1984 agreement, payments on principal and interest shall be made in equal annual installments. According to documentation provided by the Agency, beginning in July 2003, the Agency made quarterly transfers of \$62,500;

however, on March 24, 2011, the Agency paid an additional \$456,458 payment. This amount will not be permitted because it was not made pursuant to the 1984 agreement. The Agency also made an additional \$62,500 payment although documentation provided shows that the outstanding balance should have been fully satisfied prior to the \$62,500 payment. Therefore, the OFA balance available for distribution will be increased by \$518,958 ($\$456,458 + \$62,500$).

Additionally, during the Recognized Obligation Payment Schedule (ROPS) for the January through June 2012 period (ROPS I) a \$250,000 payment was also made. Per Finance's May 27, 2012 letter, the amount due was pursuant to an amendment to the original agreement entered into after June 27, 2011 and was therefore denied. While the County Auditor Controller generally makes adjustments for disallowed expenditures pursuant to HSC section 34186 (a), no adjustment was made to reflect the disallowed expenditure; therefore, the OFA balance available for distribution will be increased by \$250,000 as this payment was not made pursuant to an enforceable obligation.

- Payments made for the Monitoring Wells Project totaling \$40,000. The Agency claims this item was approved on the ROPS I. Our review indicates the Agency was approved for and spent \$18,000 towards this item during the ROPS I period. Our review also indicates the remaining \$22,000 was paid in two installments in September and December 2011. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171. HSC section 34171 (d) (2) states "enforceable obligation" does not include any agreements, contracts, or arrangements between the city that created the RDA and the former RDA. These payments were made pursuant to an agreement between the City and the former RDA after the first two years of the RDA's creation. Therefore, the transfers totaling \$22,000 was not made pursuant to an enforceable obligation and is not permitted. The OFA balance available for distribution will be increased by \$22,000.
- The request to retain funds totaling \$12,705 is not allowed. The Agency claims the amounts were accrued during the ROPS I period for administrative expenses but were not paid until July 2012. Our review indicates that this is the case; however, per the Prior Period Payments worksheet on the January through June 2013 ROPS (ROPS III) period, the Agency exceeded the approved amount by \$12,925. Therefore, this payment was not made pursuant to an enforceable obligation and is not permitted. In addition, the County Auditor Controller did not offset the ROPS III distribution for the unapproved expenditure; therefore the OFA balance will be increased by the amount not approved for on ROPS I of \$12,925.
- The transfer for the Markley Creek project in the amount of \$1 million in bond proceeds is disallowed. Per HSC section 34179.5 (c) (2), the dollar value of assets and cash transferred by the former redevelopment agency or successor agency to the city, county, or city and county that formed the former RDA between January 1, 2011 through June 30, 2012 must be evidenced by documentation of the enforceable obligation that required the transfer. HSC section 34179.5 states "enforceable obligation" includes any of the items listed in subdivision (d) of section 34171, contracts detailing specific work that were entered into by the former redevelopment agency prior to June 28, 2011 with a

third party other than the city, county, or city and county that created the former RDA, and indebtedness obligations as defined in subdivision (e) of Section 34171. However, for DDR purposes, these disallowed transactions will not affect the amount available for distribution to the affected taxing entities because bond proceeds are restricted assets. These improper transfers should be reversed, and the Agency should recover the bond proceeds.

We note that pursuant to HSC section 34191.4 (c), successor agencies that have been issued a Finding of Completion by Finance will be allowed to use excess proceeds from bonds issued prior to December 31, 2010 for the purposes for which the bonds were issued. Successor Agencies are required to defease or repurchase on the open market for cancellation any bonds that cannot be used for the purpose they were issued or if they were issued after December 31, 2010.

The Agency did not object to the following adjustment made by Finance during the Meet and Confer process. HSC section 34179.6 (d) authorizes Finance to make adjustments. We maintain that the following adjustments are appropriate:

- Properties transferred to the City totaling \$2,457,484. These properties were not transferred for governmental use pursuant to HSC 34181 (a), as communicated in our Objection to Oversight Board letter dated November 2, 2012. However, for DDR purposes, the value of the transfer will not be considered when determining the amount available for distribution to the affected taxing entities because properties are not cash or cash equivalent. The Agency should reverse the improper transfer of properties, recover the assets from the City, and include these properties in its long-range property management plan which is to be submitted to Finance pursuant to HSC section 34191.5.

The Agency's OFA balance available for distribution to the affected taxing entities has been revised to \$1,033,783. (see table below).

| OFA Balances Available For Distribution To Taxing Entities | |
|---|---------------------|
| Available Balance per DDR: | \$ 229,900 |
| Finance Adjustments | |
| Add: | |
| Disallowed transfers | \$ 790,958 |
| Request to retain balances not supported | 12,925 |
| Total OFA available to be distributed: | \$ 1,033,783 |

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result

Ms. Dawn Merchant
May 1, 2013
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in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

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

Sincerely,



STEVE SZALAY
Local Government Consultant

cc: Lynn Tracy Nerland, City Attorney
Bob Campbell, Auditor-Controller, Contra Costa County
California State Controller's Office



October 14, 2013

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

Dear Mr. Mar:

In response to the letter from the State Controller's Office dated October 2, 2013, regarding the draft Antioch Development Agency Asset Transfer Review, the City of Antioch as Successor Agency to the Antioch Development Agency is responding to the two findings outlined in the report within the 10 day period allowed.

The State Controller's Office has identified a total of \$1,871,458 in unallowable transfers between the Antioch Development Agency (ADA) and City of Antioch (City) that through its Findings and Orders of the Controller has ordered the City to reverse and turn over the assets to the Successor Agency, whereby the Successor Agency is then directed to properly dispose of those assets in accordance to H&S Code 34177 (d) and (e).

The following is the formal response to each of the findings noted in the draft report.

Finding #1 – Unallowable Transfers of \$1,871,458

This finding addresses three different transfers that occurred between the ADA and the City. Each transfer will be addressed separately:

1. On March 22, 2011, the ADA transferred \$1,000,000 in bond proceeds (from the issuance of the Antioch Public Financing Authority 2002 Lease Revenue Bonds) to the City. The former ADA is responsible for repayment of these bonds and is also a party to the financing authority. Bond proceeds were placed with the redevelopment agency in 2008 to be held for future redevelopment projects and \$1,000,000 was subsequently transferred to the City in 2011 to finance the Markley Creek Culvert Crossing Project. Health and Safety Code Section 34167.5 states that the Controller can order the reversal of transfers if the funds have not been contractually committed to a third party. These funds were

contractually committed to a third party and have been spent by the third party and are not available to be returned to the Successor Agency.

Notwithstanding the fact that the funds have been spent, the funds at issue are bond proceeds. Upon receipt of a finding of completion from the Department of Finance, the Successor Agency will be allowed to use bond proceeds for the purposes for which the bonds were issued. The Successor Agency intends to request approval for the expenditure of these bond proceeds on a ROPS once it has obtained a finding of completion. The Markley Creek Culvert Crossing Project does appear on the ROPS 13-14B approved by the Oversight Board but with no payment currently claimed for the 13-14B period.

2. From January 1, 2011 through January 31, 2012, the ADA made transfers totaling \$831,458 to the City to meet loan conditions as specified in a loan between the City, Antioch Development Agency and the State Department of Boating and Waterways. The original loan agreement was executed in 1984 and committed the ADA to depositing tax increment in the City's Marina Fund to meet loan and operating obligations of the City's municipal marina. The loan was amended in 2002 and required that the ADA deposit a minimum of \$2.5 million over ten years and maintain a capital reserve for the Marina. The transfers were done to meet these requirements in order to avoid a default under the loan agreement. The loan agreement constitutes an enforceable obligation of the Successor Agency. Additionally, the funds at issue were deposited in the reserve fund as required by the loan agreement. In accordance with the loan agreement, the loan funds cannot be withdrawn without the consent of the State Department of Boating and Waterways. The Successor Agency has requested clarification on how to comply with the Department of Finance's order regarding these same funds given the loan agreement restrictions and has not received a response.

It should also be noted that the Department of Finance, in its final determination of the amounts owed on the Other Funds Due Diligence Review determined that a portion of the funds were transferred on January 1, 2011 and therefore outside of the scope of the DDR. These funds should not be subject to the Controller's Order. A copy of the Departments final determination is attached.

3. From January 1, 2011 through January 31, 2012, the ADA made transfers totaling \$40,000 to the City for the Monitoring Wells Project. These funds were approved by both the City Council and Antioch Development Agency in the adopted budget for the City and Development Agency prior to redevelopment dissolution. Funds were committed to a third party contractor and subsequently spent on the project. Furthermore, the Department of Finance approved \$18,000 of the transfer on the first ROPS reporting period. Attached is a copy of the Department of Finance's Other Funds Due Diligence Review determining that \$18,000 of the \$40,000 was transferred pursuant to an enforceable obligation. Although the Successor Agency continues to disagree with the Department and the Controller on the remaining \$22,000, the Controller's report should at a minimum reflect that

\$18,000 of these funds were transferred in accordance with an enforceable obligation and therefore are not subject to the Controller's order.

Finding #2 – Unallowable RDA assets transferred to the Housing Agency

As stated in the finding, the Oversight Board to the Successor Agency passed Resolution 2012-07 retroactively approving the transfer of housing assets to the Successor Housing Agency. In terms of the Order of the Controller, we would like to clarify that the Department of Finance did not object to the Oversight Board action within the required statutory timeframe, therefore the Oversight Board action took effect in accordance with Health and Safety Code Section 34179(h).

Please contact me at (925)779-6135 if you should have any questions. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawn Merchant".

Dawn Merchant
Finance Director

Cc: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney

Enclosure

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