

REDONDO BEACH REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

September 2014



JOHN CHIANG
California State Controller

September 30, 2014

Marni Ruhland, Budget, Revenue, and Payroll Manager
Redondo Beach Redevelopment/Successor Agency
415 Diamond Street
Redondo Beach, CA 90277

Dear Ms. Ruhland:

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

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

Our review found that the RDA transferred \$19,325,045 in assets after January 1, 2011, including unallowable transfers to the City totaling \$292,717, or 1.51% 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/kw

cc: Bill Brand, Oversight Board Chair
City of Redondo Beach Redevelopment/Successor Agency
Steve Aspel, Interim City Manager
City of Redondo Beach Redevelopment/Successor Agency
John Naimo, Auditor-Controller
Los Angeles County
David Botelho, Program Budget Manager
California Department of Finance
Richard J. Chivaro, Chief Legal Counsel
State Controller's Office
Elizabeth González, Bureau Chief
Division of Audits, State Controller's Office
Betty Moya, Audit Manager
Division of Audits, State Controller's Office
Daniel Tobia, Auditor-in-Charge
Division of Audits, State Controller's Office
Keith DeAnda, Auditor
Division of Audits, State Controller's Office

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Asset Transfer Review Report

Summary

The State Controller's Office (SCO) reviewed the asset transfers made by the Redondo Beach 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 \$19,325,045 in assets after January 1, 2011, including unallowable transfers to the City of Redondo Beach (City) totaling \$292,717, or 1.51% 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 Redondo Beach Redevelopment Agency transferred \$19,325,045 in assets after January 1, 2011, including unallowable transfers to the City of Redondo Beach totaling \$292,717, or 1.51% of transferred assets.

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

Views of Responsible Officials

We issued a draft review report on August 4, 2014. Joe Hoefgen, Interim City Manager, responded by letter dated August 18, 2014, disagreeing with the review results. The City's response is included as an attachment to this final review report.

Restricted Use

This report is solely for the information and use of the City of Redondo Beach, 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

September 30, 2014

Finding and Order of the Controller

FINDING— Unallowable asset transfers to the City of Redondo Beach

The Redondo Beach Redevelopment Agency (RDA) made unallowable asset transfers of \$292,717 to the City of Redondo Beach (City). The transfers occurred after January 1, 2011, and the assets were not contractually committed to a third party prior to June 28, 2011.

Unallowable asset transfers were as follows:

- On October 4, 2011, the RDA transferred \$211,937 in cash to the City as an interest payment on a loan with the City.
- On January 31, 2012, the RDA transferred \$80,780 in cash to the City as an interest payment on a loan with the City.

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).

Order of the Controller

Pursuant to H&S Code section 34167.5, the City is ordered to reverse the transfers totaling \$292,717 and turn over the assets to the Successor Agency. The Successor Agency is directed to properly dispose of the assets in accordance with H&S Code section 34177(d).

City's Response

The City of Redondo Beach, as Successor Agency, disagrees with the proposed finding and is providing the following information in response to the finding and order of the Controller.

The two interest payments arise out of a long-standing formal partnership among the City of Redondo Beach, the RDA, and the California State Lands Commission ("Commission") for the Harbor Center Redevelopment Project. The interest payments were made to satisfy the provisions of a 2009 Agreement ("State Agreement") and a 1990 Cooperation Agreement. Together, these agreements allocate tax increment funding revenue to pay the debt service on the Commission's loan from the Tidelands Trust to the RDA and created a three party agreement that should be categorized as an enforceable obligation.

Health and Safety Code section 34171 did not take effect until February 1, 2012, when successor agencies replaced redevelopment agencies. More importantly, however, it is Section 34167 that governed the actions of redevelopment agencies prior to dissolution. The definition of "enforceable obligation" in Section 34167(d) did not exclude city-agency agreements, and the section authorized the agency to repay "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Section 34167 remained in effect through January 31, 2012.

SCO's Comment

The SCO disagrees with the City. Per the copy of the Cooperation Agreement provided, the two interest payments were in regard to an advance from the City to the RDA in 1990. The transfers are in violation of H&S Code section 34167.5. Although H&S Code section 34167(d) does not exclude city-agency agreements, H&S Code section 34167.5 prohibits an RDA from transferring assets to other public agencies after January 1, 2011.

The Finding and Order of the Controller remain as stated.

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

| | |
|---|-------------------|
| Cash transfer as an interest payment on a loan (October 4, 2011) | \$ 211,937 |
| Cash transfer as an interest payment on a loan (January 31, 2012) | <u>80,780</u> |
| Total unallowable asset transfers | <u>\$ 292,717</u> |

**Attachment—
City of Redondo Beach's
Response to Draft Review Report**



Office of the City Manager

415 Diamond Street, P.O. Box 270
Redondo Beach, California 90277-0270
www.redondo.org

tel 310 372-1171
fax 310 379-9268

August 18, 2014

Jeffery V. Brownfield, Chief
Local Government Compliance Bureau
Division of Audits
State Controller's Office
P.O. Box 942850
Sacramento, CA 94258-5874

*Re: Asset Transfer Audit for the Successor Agency to the Redondo Beach
Redevelopment Agency*

Dear Mr. Brownfield:

We appreciate the opportunity to respond to the State Controller's letter dated August 4, 2014 and State Controller's Office (SCO) review report dated August 2014 that found the City of Redondo Beach Redevelopment Agency (RDA) transferred \$19,325,045 in assets, which included unallowable transfers of \$292,717. The City of Redondo Beach, as Successor Agency, disagrees with the proposed finding and is providing the following information in response to the finding and order of the Controller.

Finding – Unallowable Asset Transfer

Under "Transfers to the City of Redondo Beach," the SCO Review found that transfers totaling \$292,717 were unallowable:

- a. On October 4, 2011, the RDA transferred \$211,937 in cash to the City as an interest payment on a loan with the City.
- b. On January 31, 2012, the RDA transferred \$80,780 in cash to the City as an interest payment on a loan with the City.

The SCO contends that the two interest payments were unallowable asset transfers as they were not enforceable obligations pursuant to H&S Code section 34171(d)(2).

Summary

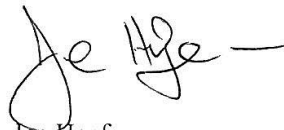
The two interest payments above arise out of a long-standing formal partnership among the City of Redondo Beach, the RDA, and the California State Lands Commission

("Commission") for the Harbor Center Redevelopment Project. The interest payments were made to satisfy the provisions of a 2009 Agreement ("State Agreement") and a 1990 Cooperation Agreement. Together, these agreements allocate tax increment funding revenue to pay the debt service on the Commission's loan from the Tidelands Trust to the RDA and created a three party agreement that should be categorized as an enforceable obligation. Attached are the relevant agreements.

Health and Safety Code section 34171 did not take effect until February 1, 2012, when successor agencies replaced redevelopment agencies. More importantly, however, it is Section 34167 that governed the actions of redevelopment agencies prior to their dissolution. The definition of "enforceable obligation" in Section 34167(d) did not exclude city-agency agreements, and the section authorized the agency to repay "any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy." Section 34167 remained in effect through January 31, 2012.

Please let us know if you have any questions regarding the City's response.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Hoefgen", followed by a horizontal line.

Joe Hoefgen
Interim City Manager

Encl: Cooperation Agreement of 1990
Harbor Center Agreement of 2009

cc: Peter Carmichael, Economic Development Director, City of Redondo Beach
Elizabeth Hull, Special Counsel, Successor Agency to the Redondo Beach
Redevelopment Agency

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COOPERATION AGREEMENT

This COOPERATION AGREEMENT (the "Agreement") is made and entered into by and between the CITY OF REDONDO BEACH, a municipal corporation (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF REDONDO BEACH, a public body, corporate and politic (the "Agency").

RECITALS

1. The Redevelopment Plan for the Harbor Center Redevelopment Project (the "Project") was adopted by the City Council of the City of Redondo Beach by Ordinance No. 2304 on December 1, 1980.

2. For the purpose of effectuating the Redevelopment Plan, a Disposition and Development Agreement (the "DDA") among the Agency, the City and Redondo Triangle Associates, a California limited partnership (the "Developer") was executed as of August 22, 1983. The DDA provided for the Agency to acquire fee title to certain property (the "Site") within the Project area and to convey a portion of such property to the Developer for the construction and operation of a mixed use development including hotel, commercial and office uses.

3. On September 10, 1984, the City and the Agency entered into a Cooperation Agreement (the "1984 Cooperation Agreement"). The 1984 Cooperation Agreement recites that under the DDA, certain obligations (including those specified in

Sections 201 through 324 of the DDA) including but not limited to the acquisition of fee title to the Site, relocation costs, legal, accounting and improvements related to the development of the Site, including sewer connections and street widenings (collectively the "DDA Obligations"), were incurred by the Agency. Pursuant to said 1984 Cooperation Agreement the City agreed to use Tidelands Fund and Uplands Fund revenue to pay the costs associated with land acquisition. In 1988, however, a series of natural disasters befell the King Harbor area, causing the Tidelands Fund to incur large unexpected costs while reducing the Tidelands Fund's rental revenue. As a result of these natural disasters and other unexpected financial setbacks, the Parties have determined that it is in their mutual interest, and in the interest of the residents of Redondo Beach, to replenish the Tidelands Fund and the Uplands Fund, so that monies from the Tidelands Fund and the Uplands Fund can be used to pay a portion of the cost of necessary repairs and improvements to the King Harbor area.

4. The first of King Harbor's 1988 natural disasters occurred on January 17, 1988, when waves more than twenty feet high breached the Harbor breakwater, destroyed several commercial buildings in the Harbor, damaged the Redondo Beach pier, undermined public streets and parking areas and flooded the Harbor. In the immediate aftermath of the January 1988 storm, Tidelands Fund revenues totalling Two Million Five Hundred Eighty-Eight Thousand Dollars (\$2,588,000) were expended on emergency repairs. Tidelands Fund revenues will be used to pay

debt service on three loans, in an aggregate principal amount of Eight Million Five Hundred Thousand Dollars (\$8,500,000) which have been obtained from the State of California Department of Boating and Waterways for storm recovery and hazard mitigation expenses necessitated by the January 17, 1988 storm.

5. On April 30, 1988, a second storm tore the promenade section of the pier from its pilings and seriously damaged portions of the remaining adjacent pier structure. The estimated cost to the Tidelands Fund of repairing the pier and replacing a building damaged in the storm is Six Hundred Eighty-Five Thousand Eight Hundred Forty-Four Dollars (\$685,844).

6. Finally, on May 27, 1988, a fire engulfed 50% of the remaining portion of the pier causing major destruction, which was exacerbated by high winds and waves on May 29, 1988. As a result of the further damage caused by the fire, winds and waves, the pier will have to be reconstructed at a cost of approximately Six Million Dollars (\$6,000,000). It is anticipated that the Tidelands Fund will pay a portion of the cost of reconstruction.

7. The Tidelands Fund has lost approximately One Million Five Hundred Thousand Dollars (\$1,500,000) in rental revenue as a result of the 1988 disasters because of the destruction of businesses on the pier and the Harbor and the loss of patronage suffered by physically undamaged pier businesses which pay a percentage of their gross receipts to the Tidelands Fund as rent.

8. Moreover, the City's and Agency's obligations under the DDA are much more burdensome than was anticipated when the

1984 Cooperation Agreement was executed. The City acquired the Site by eminent domain, and the Court awarded compensation to the former owners of the Site in an amount far in excess of what the City and Agency had anticipated. This unexpectedly high award of damages has been upheld by the Court of Appeal. Although the Developer under the DDA is required to pay a portion of the land acquisition cost, a substantial part of such cost will be borne by the City and the Agency under the terms of the DDA. The City paid a total of Four Million Three Hundred Sixty-Nine Thousand Two Hundred Thirty-Two Dollars (\$4,369,232) toward satisfaction of the judgment (including Three Million Five Hundred Thousand Dollars (\$3,500,000) from the Tidelands Fund and Eight Hundred Sixty-Nine Thousand Two Hundred Thirty-Two Dollars (\$869,232) from the Uplands Fund), and the Agency has paid Eight Hundred Sixty-Nine Thousand Two Hundred Thirty-Two Dollars (\$869,232).

9. The Tidelands Fund and the Uplands Fund have been substantially depleted by storm recovery and hazard mitigation costs, reduced rental revenue and the eminent domain award.

10. The Agency and the City have determined that the Project area and King Harbor are highly interdependent and that repairs and hazard mitigation improvements to King Harbor are essential to the viability of the Project area as well as King Harbor. The Parties believe that their respective interests, as well as the interests of the residents of the City of Redondo Beach, will be served if money from the Tidelands Fund and the Uplands Fund can be replenished, so that Tidelands Fund and

Uplands Fund money is available for the purpose of effecting necessary repairs and improvements to the Harbor.

11. On December 19, 1989, the Cit Council of the City of Redondo Beach, upon the recommendation of the Agency, adopted Ordinance No. 2568, which amended the Redevelopment Plan for the Harbor Center Redevelopment Project by adding a tax allocation provision and authorizing the Agency to pay the cost of certain public improvements necessitated by the 1988 disasters.

NOW, THEREFORE, in consideration of the mutual covenants and promises, conditions, limitations and other provisions of this Agreement, and in furtherance of the purposes and intent expressed in the above recitals, the City and the Agency do hereby agree as follows:

I. [§ 100] AGENCY OBLIGATIONS

As used in this agreement, "Available Project Tax Increment" shall mean tax increment generated by the Harbor Center Redevelopment Project area and paid to the Agency pursuant to Section 33670 of the Health and Safety Code and the Redevelopment Plan as amended, after deducting therefrom any amounts necessary to pay costs incurred by the Agency from time to time in connection with the implementation of the Redevelopment Plan. The Agency shall apply all Available Project Tax Increment to reimburse City in the amount of Four Million Three Hundred Sixty-Nine Thousand Two Hundred Thirty-Two Dollars (\$4,369,232), plus interest thereon from the date of each such payment by City.

The rate of interest shall be the current rate of the State/Local Agency Investment Fund, administered by the California State Treasury Department. The interest rate shall be readjusted on December 31, 1990, and each succeeding December 31st thereafter as long as there is an outstanding balance owed by the Agency to the City under this Agreement.

Notwithstanding any other provision of this Agreement, the Agency shall have no obligation under this Agreement to use funds other than Available Project Tax Increment for any purpose.

II. [§ 200] CITY OBLIGATIONS

1. City shall apply all amounts received from Agency pursuant to this Agreement to replenish the Tidelands Fund and the Uplands Fund.

2. City shall cause the Tidelands Fund and the Uplands Fund to be used in part, consistent with Trust restrictions, to pay for a portion of the cost of restoration of and hazard mitigation improvements to King Harbor.

3. City shall seek to obtain a reimbursement and additional funding for storm recovery and hazard mitigation expenses from third parties, including but not limited to the Federal Emergency Management Agency and the State of California Office of Emergency Services.

III. [§ 300] COMPLIANCE WITH LAW

The Agency and the City, to the extent each is obligated, agree to comply with all applicable local and state statutes, ordinances, regulations and instructions.

IV. [§ 400] AMENDMENT AND ASSIGNMENT OF CONTRACT

4 All amendments to this Agreement must be in writing and executed with mutual consent of the City and the Agency. This Agreement may not be assigned without the written approval of the City and the Agency.

V. [§ 500] INDEMNIFICATION

In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, do hereby agree to hold each other harmless and to defend each other and its officers, agents or employees by law for injury caused by negligent or wrongful act or omission occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above stated purpose, each party indemnifies and hold harmless the other party for any loss, cost or expense that may be imposed upon such other party solely by virtue of said Section 895.2.

VI. [§ 600] SUBORDINATION

The obligations of the Agency under this Agreement shall be subordinate to any pledge of tax increment made by the Agency including, without limitation, any pledge made for the purpose of selling tax allocation bond(s).

VII. [700] EFFECT ON 1984 COOPERATION AGREEMENT

To the extent that this Agreement is inconsistent with the 1984 Cooperation Agreement, this Agreement shall prevail. Otherwise, the 1984 Cooperation Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Redondo Beach and the Redondo Beach Redevelopment Agency have caused this Agreement to be executed by their duly authorized representatives.

APPROVED AS TO FORM:
CITY ATTORNEY

By: [Signature]

Date: June 14, 1990

Executed this 19th day of June 1990

For: THE CITY OF REDONDO
BEACH

By: [Signature]
Mayor

ATTEST

[Signature]
City clerk

Executed this 19th day of June 1990

For: REDONDO BEACH
REDEVELOPMENT AGENCY

By: [Signature]

igp>rpt\$>barry*>coop.agr.city.ag

**AGREEMENT REGARDING THE HARBOR CENTER PROJECT
AND KINCAID'S RESTAURANT LEASE**

This Agreement Regarding the Harbor Center Project and Kincaid's Restaurant Lease (Agreement) is entered into by and between the City of Redondo Beach, acting by and through its City Council (City) and the State of California, acting by and through the California State Lands Commission (Commission).

WHEREAS, the City acquired legal title as trustee to certain tidelands and submerged lands located within its boundaries through a series of statutory grants from the State of California, commencing with Chapter 57, Statutes of 1915 (the Granted Trust Lands); and

WHEREAS, the Granted Trust Lands are subject to constitutional, statutory, and common law requirements that impose certain public trust restrictions on their use and the use of the revenues derived from these lands, which public trust restrictions are referred to as the "Trust;" and

WHEREAS, the fundamental purpose of the Trust is to protect and preserve the tidelands and submerged lands of the State of California for the benefit of all of the citizens of the State and to that end the Trust restricts the use of the Granted Trust Lands and revenues derived from these lands to purposes connected with or that promote and accommodate marine oriented commerce, navigation, fisheries, recreation and ecological preservation; and

WHEREAS, the statutory grants of the Granted Trust Lands confer the status of trustee on the City with respect to the Granted Trust Lands and the revenues derived from them; and

WHEREAS, applicable law imposes a fiduciary responsibility on the trustee to all citizens of the State of California, who are the Trust beneficiaries, and requires, among other things, that the trustee administer the Trust property in accordance with the requirements and restrictions of the Trust and solely in the interests of the Trust beneficiaries; and

WHEREAS, under state law, property purchased with Trust assets becomes Trust property and is subject to the provisions of the Trust; and

WHEREAS, the City administers the Trust on a day-to-day basis and may enter into contracts and acquire property beneficial to and consistent with the Trust; and

WHEREAS, the City and the Commission desire a stable, reliable basis for determining how to resolve disputes that have arisen between them regarding the Harbor Center Project and Kincaid's Restaurant Lease;

NOW, THEREFORE, the City and the Commission agree as follows:

ARTICLE 1. DEFINITIONS

"Authorized Representative" means with respect to the City, the City Manager or his or her duly authorized designee, and with respect to the Commission, the Executive Officer of the Commission or his or her duly authorized designee.

"Harbor Center Project" means the hotel, retail and parking complex on lands acquired by the City using Trust funds and uplands that was developed by the City's Redevelopment Agency pursuant to the Harbor Center Redevelopment Plan originally adopted on December 1, 1980.

"Kincaid's Restaurant Lease" means the agreement entered into in 1997 between the Redondo Beach Public Finance Authority (PFA) and the City for the construction of a restaurant on the "Horseshoe" portion of the Redondo Beach pier on the Granted Trust Lands and later subleased by the PFA to Kincaid's for the operation of Kincaid's Restaurant.

ARTICLE 2. ACTIVITIES TO BE UNDERTAKEN

- A. Harbor Center Project
 - a. The City shall apply annually to the repayment of the tidelands debt, the Harbor Center area tax increment revenues in excess of those needed for debt service of existing bonded indebtedness and regular operating expenses, unless otherwise approved by the Commission.
 - b. The City shall begin within 90 days of the effective date of this Agreement and proceed expeditiously and in a commercially reasonable manner with negotiations for a land exchange of the Trust parcel in the Harbor Center Project area for a parcel more useful to the Trust.
- B. Kincaid's Restaurant Lease
 - a. The City shall submit annually to the Commission within five business days of each anniversary date of this Agreement, a detailed accounting of the income and expenditures relating to the Kincaid's Restaurant Lease, in addition to its responsibilities under the Public Resources Code Section 6306.
- C. Miscellaneous Activities
 - a. The City shall notify the Commission staff of proposed leases in excess of five years involving Trust property no later than fourteen days prior to City Council consideration.
 - b. The City shall provide funding or reimbursement for Commission staff review and monitoring of future activities involving Trust lands and

assets submitted to the Commission by the City for review, consistent with the reimbursement requirements applicable to other tidelands trustees. Such reimbursement shall be reasonably determined by Commission staff and the City prior to commencement of work by Commission staff on any particular project.

- c. The City shall seek Commission approval before committing to any capital improvement expenditure in excess of \$250,000, pursuant to Chapter 1555, Statutes of 1971, directly or indirectly from debt proceeds secured by a pledge of Trust revenues or assets as collateral, consistent with the requirements applicable to other tideland trustees.

ARTICLE 3. RELEASE

For the sole consideration of the mutual promises, agreements, commitments and covenants in this Agreement, the receipt and sufficiency of which are acknowledged, the City and the Commission release and forever discharge and hold harmless one another and all of their boards, bureaus, officers, commissioners, agents, employees, attorneys and all persons that acted on its or their behalf with relation to the Harbor Center Project and Kincaid's Restaurant Lease, of and from any and all matters, claims and suits of every kind whatsoever, including, but without limitation, any relating to any and all known or unknown breach of duty, damage, loss, cost or expenses of every nature whatsoever resulting or to result from the events connected with the City's and the Commission's actions or omissions in relation to the Harbor Center Project and Kincaid's Restaurant Lease as of the effective date of this Agreement. The release shall be effective only upon full compliance by the City with all of its obligations under this Agreement.

ARTICLE 4. EFFECTIVE DATE

The effective date of this Agreement shall be the date when this Agreement has been executed by the Authorized Representatives of both the City and the Commission.

ARTICLE 5. ALTERNATIVE DISPUTE RESOLUTION

- A. If a dispute arises between the City and the Commission relating to this Agreement, the City and the Commission shall notify each other promptly and use, to the fullest extent permitted by law, negotiation to resolve the dispute. No legal action may be brought in connection with this Agreement until the City and the Commission have met and conferred in person through their respective staffs to seek an amicable resolution to the dispute.
- B. The City and the Commission understand that the full implementation of this Agreement will require the execution of further agreements, the full nature of

which are not currently known. In the event that such agreements cannot be executed, the City and the Commission will meet and confer in order to seek a mutually agreeable outcome.

ARTICLE 6. NOTICES

The Authorized Representatives for receipt of all notices and correspondence related to this Agreement are:

City Manager
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Executive Officer
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

ARTICLE 7. MISCELLANEOUS

A. Entire Agreement

This Agreement contains the entire understanding of the City and the Commission with respect to the subject matter of this Agreement and supersedes all prior oral and written agreements and understandings with respect to this subject matter to the extent those prior agreements and understandings are inconsistent with this Agreement.

B. Headings

The headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of the terms of this Agreement.

C. Non-Admission

This Agreement is not an admission by either the City or the Commission with respect to any matter addressed in it. This Agreement shall not be admissible in any proceeding as evidence of or an admission by either the City or the Commission of any violation of any law or regulation or wrongful act. This Agreement may not be used a precedent with respect to any dispute that may arise after its effective date.

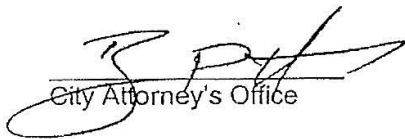
IN WITNESS WHEREOF, the City and the Commission have executed this Agreement on the date set forth to the left of their signatures.

THE CITY OF REDONDO BEACH

Dated: _____, 2009

By: _____
Mayor

APPROVED AS TO FORM:



City Attorney's Office

ATTEST:

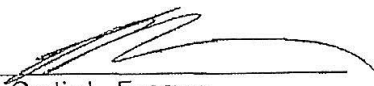
City Clerk

CALIFORNIA STATE LANDS COMMISSION

Dated: _____, 2009

By: _____
Paul D. Thayer
Executive Officer

APPROVED AS TO FORM:

By: 
Curtis L. Fossum
Chief Counsel

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

<http://www.sco.ca.gov>