

RESOLUTION NO. 17

**RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY OF
THE FORMER MILPITAS REDEVELOPMENT AGENCY APPROVING THE
NON-HOUSING FUND DUE DILIGENCE REVIEW**

WHEREAS, the California State Legislature enacted Assembly Bill x1 26 to dissolve redevelopment agencies formed under the Community Redevelopment Law (Health and Safety Code section 33000 et seq.), as amended by Assembly Bill 1484, Statutes of 2012, enacted June 27, 2012 (“Dissolution Law”); and

WHEREAS, the City of Milpitas (“City”) is designated as the successor agency (“Successor Agency”) to the dissolved Milpitas Redevelopment Agency (“Dissolved RDA”) and is required to expeditiously wind down the affairs of the Dissolved RDA pursuant to the Dissolution Law and in accordance with the direction of its oversight board (“Oversight Board”); and

WHEREAS, the Dissolution Law requires the Successor Agency to remit all unencumbered balances of the Dissolved RDA to the Santa Clara County Auditor-Controller (“Auditor-Controller”) for distribution to the taxing entities; and

WHEREAS, pursuant to Health and Safety Code section 34179.5, the Successor Agency shall cause to be completed a due diligence review (“Non-Housing Due Diligence Review”) of all other funds and accounts (exclusive of the Low and Moderate Income Housing Fund) and report the amount of cash and cash equivalents available for allocation to taxing entities determined in accordance with the method provided therein (“Unobligated Cash Balance”); and

WHEREAS, in fulfillment of the Successor Agency’s obligations under Health and Safety Code sections 34179.5 and 34179.6, the Auditor-Controller completed the Non-Housing Fund Due Diligence Review and determined the Unobligated Cash Balance, in the form attached hereto as Exhibit A, and submitted the results to the Oversight Board, the State Controller, and the Department of Finance (“DOF”); and

WHEREAS, pursuant to Health and Safety Code section 34179.6(b), the Oversight Board convened a public comment session on January 7, 2013 to consider the Non-Housing Fund Due Diligence Review and the Unobligated Cash Balance; and

WHEREAS, the Successor Agency to the former Milpitas Redevelopment Agency, the City of Milpitas, and the Milpitas Economic Development Corporation (collectively “Milpitas Entities”) presented a response to the Non-Housing Due Diligence Review, attached hereto as Exhibit B, and requested that it be submitted to DOF; and

WHEREAS, the Oversight Board considered any comments from the County Auditor-Controller; and

WHEREAS, the Oversight Board requested additional information regarding Intra-Entity advances or loans (“Intra-Entity Loans”) made by the Dissolved RDA to the City in the aggregate amount of \$6,998,206, which were reported in the January 7, 2013 Non-Housing Fund Due Diligence Review as assets excluded from the Unobligated Cash Balance; and

WHEREAS, the Milpitas Entities Response also noted that there was an additional advance—made on the same terms as the others—from the Dissolved RDA (or funds transferred from the Dissolved RDA) to the City in the principal amount of \$2,550,000, which was approved by the Dissolved RDA’s Board on August 3, 2010, but subsequently funded in 2011 and therefore treated by the State Controller in his August 28, 2011 Audit and Order and in the Non-Housing Due Diligence Review as a disallowed asset transfer from the assets transferred to the Milpitas Economic Development Corporation; and

WHEREAS, pursuant to Resolution No. RA327/7852, the Intra-Entity Loans shall be payable on demand within thirty days after demand is made by the Dissolved RDA, or if no demand is made, twenty years from the effective date of the respective loan; and,

WHEREAS, “payables on demand” are “cash” or “cash equivalents” for purposes of the Due Diligence Reviews under Health and Safety Code section 34179.5(b)(1); and,

WHEREAS, the Oversight Board has determined that the Intra-Entity Loans as “payables on demand” are “cash” or “cash equivalents” to be reported in the Dissolved RDA’s Unobligated Cash Balance; and

WHEREAS, Health and Safety Code section 34179.6(c) empowers the Oversight Board to adjust any amount provided in the Non-Housing Due Diligence Review to reflect additional information and analysis; and

WHEREAS, the Oversight Board shall approve and transmit to the DOF and the Auditor-Controller the Unobligated Cash Balance by January 15, 2013; and

WHEREAS, the Oversight Board now wishes to adjust the Non-Housing Due Diligence Review and the Unobligated Cash Balance to reflect the inclusion of the Intra-Entity Loans and as adjusted approve and transmit the same to the DOF and the Auditor-Controller.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board hereby finds and determines that the foregoing recitals are true and correct, and together with the following documents and information, form the basis for the approvals, authorizations, findings, and determinations set forth in this Resolution: (1) the Non-Housing Due Diligence Review, (2) the information and analysis provided by the Successor Agency, the Auditor-Controller, and Miller & Owen, legal counsel to the Oversight Board, and (3) the information and opinions provided by the public on the date hereof and at the public comment session convened on January 7, 2013.

BE IT FURTHER RESOLVED that pursuant to Health and Safety Code section 34179.6(c), the Oversight Board hereby: (1) approves the adjusted Non-Housing Due Diligence Review and Unobligated Cash Balance of \$38,875,908, plus interest earned on the unallowable transfers from the date of transfer through June 30, 2012, interest earned on the entire amount

from July 1, 2012, through the date of remittance, and 5% interest per year on the Intra-Entity Loans from June 30, 2012, through the date of repayment to reflect the inclusion of the Intra-Entity Loans, and (2) directs Miller & Owen to transmit this Resolution, the approved Non-Housing Due Diligence Review, the Milpitas Entities Response, dated January 7, 2013, and the approved Unobligated Cash Balance to DOF and the Auditor-Controller no later than January 15, 2013, and take all actions otherwise necessary under the Dissolution Law.

BE IT FURTHER RESOLVED that the Oversight Board recommends that the Department of Finance consider non-monetary assets as they are represented in the Non-Housing Due Diligence Review and consider an installment payment plan. In the event that the Milpitas Economic Development Corporation returns non-monetary assets to the Successor Agency, the Oversight Board would consider reducing the Unobligated Cash Balance.

PASSED AND ADOPTED this 14th day of January 2013, by the following vote:

AYES: (4) Chair Mendizabal, Board Members Knopf, Murdter, Wong

NOES: (3) Board Members Grilli, Gomez, Karlen

ABSENT: (0)

ABSTAIN: (0)

ATTEST:



Barbara Crump
Oversight Board Secretary

APPROVED:



Mike Mendizabal
Oversight Board Chair

EXHIBIT A

Non-Housing Due Diligence Review

County of Santa Clara

Finance Agency

County Government Center
70 West Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5205 FAX: (408) 287-7629



Friday, January 4, 2013

Hon. John Chiang, State Controller
P.O. Box 942850
Sacramento, CA 94250

Ms. Ana Matosantos, Director
Department of Finance
915 L Street
Sacramento, CA 95814

City of Milpitas Successor Agency
455 E Calaveras Blvd
Milpitas, CA 95035

City of Milpitas Oversight Board
455 E Calaveras Blvd
Milpitas, CA 95035

**Re: Milpitas Successor Agency Due Diligence Review for All Funds (Except Housing)
Pursuant to Health and Safety Code Section 34179.5**

Dear State Controller, Department of Finance, Oversight Board, and Successor Agency:

We present this Due Diligence Report for the Milpitas Successor Agency ("Agency") in accordance with Health and Safety Code section 34179.5. The agreed upon procedures were performed by Macias Gini & O'Connell LLP, retained under contract by the Santa Clara County Finance Agency. Management of the Successor Agency is responsible for the accounting records.

The information presented in this report meets the requirements of Health and Safety Code section 34179.5 for the non-housing funds of the Agency. The County Finance Agency has verified all information with the establishment of assets and liabilities per the agreed upon procedures report issued on October 10, 2012, pursuant to Health and Safety Code section 34182, and the State Controller's Asset Transfer Review, pursuant to Health and Safety Code section 34167.5, dated August 28, 2012.

The amount to be remitted to the Auditor-Controller for distribution to taxing entities pursuant to Health and Safety Code section 34179.6 is shown in Attachment B as **\$31,877,702** as of June 30,

2012, plus interest earned on the unallowable transfers from the date of the transfers through June 30, 2012, plus interest earned on the entire amount from June 30, 2012, through the date of remittance.

Of specific note, this report identifies \$6,998,206 (inclusive of interest through June 30, 2012) in three interfund advances made from RDA funds to the City in 2008 and 2009.¹ As described on Attachment I, these advances accrue 5% simple interest per year, with no required payments until maturity. Pursuant to joint Redevelopment Agency/City Resolution No. RA327/7852 (Exhibit 2), these interfund advances “shall be payable on demand within thirty (30) days after demand is made by the loaning agency to the borrowing agency, or if no demand is made, on the maturity date (i.e., after the end of the twenty-year period).”

At present, these three interfund advances due from the City are treated as “non-liquid” and therefore not distributable. However, the Oversight Board, in meeting its fiduciary duties and to expeditiously wind-down the Agency, will need to determine whether to direct a demand for their payment and liquidate these balances. Doing so would accordingly adjust the amount to be remitted in Attachment B to **\$38,875,908**, plus the categories of interest as described earlier and the additional interest due on the interfund advances after June 30, 2012, through the date of repayment.

Respectfully submitted,



Irene Lui, C.P.A.
Controller-Treasurer
County of Santa Clara

Attachments:

- Attachments A through K – Agreed-Upon Procedures and Findings
- Exhibit 1 – SCO Asset Transfer Review
- Exhibit 2 – Resolution No. RA327/7852 (Interfund Advance or Loan Policy)

¹ A fourth interfund advance was funded in 2011 from cash transferred to the Milpitas Economic Development Corporation. As a disallowed 2011 asset transfer, the funds related to this loan are included in the State Controller’s Asset Transfer Review as an amount to be returned to the Successor Agency.

City of Milpitas, Successor Agency to the Milpitas Redevelopment Agency

Attachment A – Agreed-Upon Procedures and Findings Successor Agency, Excluding Low and Moderate Income Housing Funds

The agreed-upon procedures, as it relates to all funds of the former Agency, excluding Low and Moderate Income Housing Funds, and findings are as follows:

1. Obtain from the Successor Agency a listing of all assets that were transferred from the former redevelopment agency to the Successor Agency on or about February 1, 2012. Agree the amounts on this listing to account balances established in the accounting records of the Successor Agency. Identify in the Agreed-Upon Procedures (AUP) report the amount of the assets transferred to the Successor Agency as of that date.

Finding: We obtained from the Successor Agency a listing of all assets (excluding Low and Moderate Income Housing Funds assets) that were transferred from the former redevelopment agency to the Successor Agency on or about February 1, 2012 and agreed the transfer of assets, excluding capital assets, in the amount of \$19,716,920 and the capital assets in the amount of \$101,928,140, which together totaled \$121,645,060 as of February 1, 2012, to the account balances established in the accounting records of the Successor Agency.

2. If the State Controller's Office has completed its review of transfers required under both Sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report.

Finding: The State Controller's Office (SCO) has issued its Asset Transfer Review Report (SCO Report) dated August 28, 2012 of the Milpitas Redevelopment Agency for the period from January 1, 2011 through January 31, 2012, as required by Health and Safety Code (HSC) section 34167.5. The SCO has not completed its review of transfers required under Section 34178.8. The accompanying SCO Report is included as Exhibit 1. Per the review, the SCO determined that the former redevelopment agency had made unallowable transfers of various assets in the amount of \$147,108,600 to the City of Milpitas and the Milpitas Economic Development Corporation (MEDC) and that MEDC was not separate from the City pursuant to H&S code sections 34167.10(a), 34167.10(b) and 34167.10(c). The unallowable transfers included cash of \$43,068,629 and non-cash assets of \$104,039,971. The SCO ordered the return of these assets to the Successor Agency. In addition, we obtained a listing prepared by the Successor Agency of transfers from the former redevelopment agency to the City, refer to Attachment D. The outstanding assets transferred to City and the MEDC that had not been returned as of June 30, 2012, are summarized in Attachment C.

If this has not yet occurred, perform the following procedures:

- A. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to the city, county, or city and county that formed the redevelopment agency for the period from January 1, 2011 through January 31, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency's enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.

Finding: This procedure is not applicable as the State Controller's Office has issued its Asset Transfer Review report for the period from January 1, 2011 through January 31, 2012.

- B. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to the city, county, or city and county that formed the redevelopment agency for the period from February 1, 2012 through June 30, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what

City of Milpitas, Successor Agency to the Milpitas Redevelopment Agency

**Attachment A – Agreed-Upon Procedures and Findings
Successor Agency, Excluding Low and Moderate Income Housing Funds**

sense the transfer was required by one of the Agency’s enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.

Finding: We obtained a listing prepared by the Successor Agency of the transfers from the Successor Agency to the City and noted that the Successor Agency did not list any transfers during the period from February 1, 2012 through June 30, 2012.

- C. For each transfer, obtain the legal document that formed the basis for the enforceable obligation that required any transfer. Note in the AUP report the absence of any such legal document or the absence of language in the document that required the transfer.

Findings: This procedure is not applicable following the findings in Procedures 2A and 2B above.

- 3. If the State Controller’s Office has completed its review of transfers required under both Sections 34167.5 and 34178.8 and issued its report regarding such review, attach a copy of that report as an exhibit to the AUP report.

Finding: The SCO has issued its Asset Transfer Review Report (SCO Report) dated August 28, 2012 of the Milpitas Redevelopment Agency for the period from January 1, 2011 through January 31, 2012, as required by HSC Section 34167.5. The SCO has not completed its review of transfers required under Section 34178.8. The accompanying SCO Report is included as Exhibit 1. Per the review, the SCO determined that the former redevelopment agency had made unallowable transfers of various assets in the amount of \$147,108,600 to the City of Milpitas and the Milpitas Economic Development Corporation (MEDC) and that MEDC was not separate from the City pursuant to H&S code sections 34167.10.(a), 34167.10.(b) and 34167.10.(c). The unallowable transfers included cash of \$43,068,629 and non-cash assets of \$104,039,971. The SCO ordered the return of these assets to the Successor Agency. In addition, we obtained a listing prepared by the Successor Agency of transfers from the former redevelopment agency to the MEDC, refer to Attachment E. The outstanding assets transferred to City and the MEDC that had not been returned as of June 30, 2012, are summarized in Attachment C.

If this has not yet occurred, perform the following procedures:

- A. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the former redevelopment agency to any other public agency or to private parties for the period from January 1, 2011 through January 31, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency’s enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.

Finding: This procedure is not applicable as the State Controller’s Office has issued its Asset Transfer Review report for the period from January 1, 2011 through January 31, 2012.

- B. Obtain a listing prepared by the Successor Agency of transfers (excluding payments for goods and services) from the Successor Agency to any other public agency or private parties for the period from February 1, 2012 through June 30, 2012. For each transfer, the Successor Agency should describe the purpose of the transfer and describe in what sense the transfer was required by one of the Agency’s enforceable obligations or other legal requirements. Provide this listing as an attachment to the AUP report.

City of Milpitas, Successor Agency to the Milpitas Redevelopment Agency

**Attachment A – Agreed-Upon Procedures and Findings
Successor Agency, Excluding Low and Moderate Income Housing Funds**

Finding: We obtained a listing prepared by the Successor Agency of the transfers from the Successor Agency to any other public agency or private parties and noted that the Successor Agency did not list any transfers during the period from February 1, 2012 through June 30, 2012.

- C. For each transfer, obtain the legal document that formed the basis for the enforceable obligation that required any transfer. Note in the AUP report the absence of any such legal document or the absence of language in the document that required the transfer.

Findings: This procedure is not applicable following the findings in Procedures 3A and 3B above.

4. Perform the following procedures:

- A. Obtain from the Successor Agency a summary of the financial transactions of the Redevelopment Agency and the Successor Agency in the format set forth in the attached schedule for the fiscal periods indicated in the schedule. For purposes of this summary, the financial transactions should be presented using the modified accrual basis of accounting. End of year balances for capital assets (in total) and long-term liabilities (in total) should be presented at the bottom of this summary schedule for information purposes.
- B. Ascertain that for each period presented, the total of revenues, expenditures, and transfers accounts fully for the changes in equity from the previous fiscal period.
- C. Compare amounts in the schedule relevant to the fiscal year ended June 30, 2010, to the state controller's report filed for the Redevelopment Agency for that period.
- D. Compare amounts in the schedule for the other fiscal periods presented to account balances in the accounting records or other supporting schedules. Describe in the report the type of support provided for each fiscal period.

Finding: No exceptions were noted as a result of applying these procedures, except that the financial transactions of the Successor Agency are presented using the accrual basis of accounting. Please refer to Attachment F for a summary of the financial transactions of the former Agency and the Successor Agency for the periods ended June 30, 2010, June 30, 2011, January 31, 2012, and June 30, 2012. We agreed the financial transactions of the former Agency for the period ended June 30, 2010, to the corresponding audited financial statements and State Controller's Report. We agreed the financial transactions of the former Agency for the period ended June 30, 2011, to the corresponding audited financial statements. We agreed the financial transactions of the former Agency for the period ended January 31, 2012 and for the Successor Agency for the period ended June 30, 2012, to the respective agency's financial records.

5. Obtain from the Successor Agency a listing of all assets of the former Agency funds excluding the Low and Moderate Income Housing Fund as of June 30, 2012 for the report that is due October 1, 2012 and a listing of all assets of all other funds of the Successor Agency as of June 30, 2012 (excluding the previously reported assets of the Low and Moderate Income Housing Fund) for the report that is due December 15, 2012. Agree the assets so listed to recorded balances reflected in the accounting records of the Successor Agency. The listings should be attached as an exhibit to the appropriate AUP report.

Finding: We obtained from the Successor Agency a listing of all assets of all other funds of the Successor Agency as of June 30, 2012 (excluding the previously reported assets of the Low and

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**Attachment A – Agreed-Upon Procedures and Findings
Successor Agency, Excluding Low and Moderate Income Housing Funds**

Moderate Income Housing Fund) and agreed the assets listed to the recorded balances reflected in the accounting records of the Successor Agency. The Successor Agency reported \$119,333,195 of assets held by the Successor Agency at June 30, 2012 as itemized in Attachment G.

6. Obtain from the Successor Agency a listing of asset balances held on June 30, 2012 that are restricted for the following purposes:
 - A. Unspent bond proceeds:
 - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures, amounts set aside for debt service payments, etc.)
 - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).
 - iii. Obtain from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by the Successor Agency as restricted.
 - B. Grant proceeds and program income that are restricted by third parties:
 - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures).
 - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).
 - iii. Obtain from the Successor Agency a copy of the grant agreement that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by the Successor Agency as restricted.
 - C. Other assets considered to be legally restricted:
 - i. Obtain the Successor Agency's computation of the restricted balances (e.g., total proceeds less eligible project expenditures).
 - ii. Trace individual components of this computation to related account balances in the accounting records, or to other supporting documentation (specify in the AUP report a description of such documentation).
 - iii. Obtain from the Successor Agency a copy of the legal document that sets forth the restriction pertaining to these balances. Note in the AUP report the absence of language restricting the use of the balances that were identified by Successor the Agency as restricted.
 - D. Attach the above mentioned Successor Agency prepared schedule(s) as an exhibit to the AUP report. For each restriction identified on these schedules, indicate in the report the period of time for which the restrictions are in effect. If the restrictions are in effect until the related assets are expended for their intended purpose, this should be indicated in the report.

Finding: We obtained from the Successor Agency its computation of the restricted balances for unspent bond proceeds as of June 30, 2012; traced the individual components of this computation to related account balances in the accounting records, or to other supporting documents as specified in Attachment H and obtained a copy of the legal document that sets forth the restriction pertaining to these balances.

City of Milpitas, Successor Agency to the Milpitas Redevelopment Agency

Attachment A – Agreed-Upon Procedures and Findings Successor Agency, Excluding Low and Moderate Income Housing Funds

Please refer to Attachment H for the listing of the Successor Agency's restricted assets, excluding the Low and Moderate Income Housing Fund assets, held by the Successor Agency at June 30, 2012, descriptions of the period of time for which the restrictions are in effect and findings noted.

7. Perform the following procedures:
 - A. Obtain from the Successor Agency a listing of assets as of June 30, 2012 that are **not** liquid or otherwise available for distribution (such as capital assets, land held for resale, long-term receivables, etc.) and ascertain if the values are listed at either purchase cost (based on book value reflected in the accounting records of the Successor Agency) or market value as recently estimated by the Successor Agency.
 - B. If the assets listed at 7.A. are listed at purchase cost, trace the amounts to a previously audited financial statement (or to the accounting records of the Successor Agency) and note any differences.
 - C. For any differences noted in 7.B., inspect evidence of disposal of the asset and ascertain that the proceeds were deposited into the Successor Agency trust fund. If the differences are due to additions (this generally is not expected to occur), inspect the supporting documentation and note the circumstances.
 - D. If the assets listed at 7.A. are listed at recently estimated market value, inspect the evidence (if any) supporting the value and note the methodology used. If no evidence is available to support the value and/or methodology, note the lack of evidence.

Finding: We obtained from the Successor Agency a listing of assets as of June 30, 2012 that were not liquid or otherwise available for distribution. See Attachment I. The assets are listed at purchase cost and we traced the amounts to book value to the accounting records of the Successor Agency and did not note any difference except for an amount of \$97,970,219 which represents the remaining disallowable transfer of non-cash assets from the former Agency to the City and MEDC that should be transferred back to the Successor Agency following the SCO review report as required by HSC Section 34167.5.

8. Perform the following procedures:
 - A. If the Successor Agency believes that asset balances need to be retained to satisfy enforceable obligations, obtain from the Successor Agency an itemized schedule of asset balances (resources) as of June 30, 2012 that are dedicated or restricted for the funding of enforceable obligations and perform the following procedures. The schedule should identify the amount dedicated or restricted, the nature of the dedication or restriction, the specific enforceable obligation to which the dedication or restriction relates, and the language in the legal document that is associated with the enforceable obligation that specifies the dedication of existing asset balances toward payment of that obligation.
 - i. Compare all information on the schedule to the legal documents that form the basis for the dedication or restriction of the resource balance in question.
 - ii. Compare all current balances to the amounts reported in the accounting records of the Successor Agency or to an alternative computation.
 - iii. Compare the specified enforceable obligations to those that were included in the final Recognized Obligation Payment Schedule approved by the California Department of Finance.
 - iv. Attach as an exhibit to the report the listing obtained from the Successor Agency. Identify in the report any listed balances for which the Successor Agency was unable to provide

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**Attachment A – Agreed-Upon Procedures and Findings
Successor Agency, Excluding Low and Moderate Income Housing Funds**

appropriate restricting language in the legal document associated with the enforceable obligation.

- B. If the Successor Agency believes that future revenues together with balances dedicated or restricted to an enforceable obligation are insufficient to fund future obligation payments and thus retention of current balances is required, obtain from the Successor Agency a schedule of approved enforceable obligations that includes a projection of the annual spending requirements to satisfy each obligation and a projection of the annual revenues available to fund those requirements and perform the following procedures:
- i. Compare the enforceable obligations to those that were approved by the California Department of Finance. Procedures to accomplish this may include reviewing the letter from the California Department of Finance approving the Recognized Enforceable Obligation Payment Schedules for the six month period from January 1, 2012 through June 30, 2012 and for the six month period July 1, 2012 through December 31, 2012.
 - ii. Compare the forecasted annual spending requirements to the legal document supporting each enforceable obligation.
 - a. Obtain from the Successor Agency its assumptions relating to the forecasted annual spending requirements and disclose in the report major assumptions associated with the projections.
 - iii. For the forecasted annual revenues:
 - a. Obtain from the Successor Agency its assumptions for the forecasted annual revenues and disclose in the report major assumptions associated with the projections.
- C. If the Successor Agency believes that projected property tax revenues and other general purpose revenues to be received by the Successor Agency are insufficient to pay bond debt service payments (considering both the timing and amount of the related cash flows), obtain from the Successor Agency a schedule demonstrating this insufficiency and apply the following procedures to the information reflected in that schedule.
- i. Compare the timing and amounts of bond debt service payments to the related bond debt service schedules in the bond agreement.
 - ii. Obtain the assumptions for the forecasted property tax revenues and disclose major assumptions associated with the projections.
 - iii. Obtain the assumptions for the forecasted other general purpose revenues and disclose major assumptions associated with the projections.
- D. If procedures A, B, or C were performed, calculate the amount of current unrestricted balances necessary for retention in order to meet the enforceable obligations by performing the following procedures.
- i. Combine the amount of identified current dedicated or restricted balances and the amount of forecasted annual revenues to arrive at the amount of total resources available to fund enforceable obligations.
 - ii. Reduce the amount of total resources available by the amount forecasted for the annual spending requirements. A negative result indicates the amount of current unrestricted balances that needs to be retained.
 - iii. Include the calculation in the AUP report.

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**Attachment A – Agreed-Upon Procedures and Findings
Successor Agency, Excluding Low and Moderate Income Housing Funds**

Finding: We noted the Successor Agency did not have asset balances as of June 30, 2012 that need to be retained to satisfy enforceable obligations that are not otherwise already listed in procedure 9.

9. If the Successor Agency believes that cash balances as of June 30, 2012 need to be retained to satisfy obligations on the Recognized Obligation Payment Schedule (ROPS) for the period of July 1, 2012 through June 30, 2013, obtain a copy of the final ROPS for the period of July 1, 2012 through December 31, 2012 and a copy of the final ROPS for the period January 1, 2013 through June 30, 2013. For each obligation listed on the ROPS, the Successor Agency should add columns identifying (1) any dollar amounts of existing cash that are needed to satisfy that obligation and (2) the Successor Agency's explanation as to why the Successor Agency believes that such balances are needed to satisfy the obligation. Include this schedule as an attachment to the AUP report.

Finding: We noted the Successor Agency believes that cash balances in the amount of \$10,344,363 as of June 30, 2012 need to be retained to satisfy obligations on the ROPS for the period of July 1, 2012 through December 31, 2012. Please refer to Attachment J for the results of this procedure. See Attachment K for a copy of ROPS II.

10. Include (or present) a schedule detailing the computation of the Balance Available for Allocation to Affected Taxing Entities. Amounts included in the calculation should agree to the results of the procedures performed in each section above. The schedule should also include a deduction to recognize amounts already paid to the County Auditor-Controller on July 12, 2012 as directed by the California Department of Finance. The amount of this deduction presented should be agreed to evidence of payment. The attached example summary schedule may be considered for this purpose. Separate schedules should be completed for the Low and Moderate Income Housing Fund and for all other funds combined (excluding the Low and Moderate Income Housing Fund).

Finding: See Attachment B for the results of this procedure.

11. Obtain a representation letter from Successor Agency management acknowledging their responsibility for the data provided to the practitioner and the data presented in the report or in any attachments to the report. Included in the representations should be an acknowledgment that management is not aware of any transfers (as defined by Section 34179.5) from either the former redevelopment agency or the Successor Agency to other parties for the period from January 1, 2011 through June 30, 2012 that have not been properly identified in the AUP report and its related exhibits. Management's refusal to sign the representation letter should be noted in the AUP report as required by attestation standards.

Finding: The Successor Agency's management did not agree with the finding reported in Procedure 10. As such, the Successor Agency's management refused to sign the representation letter.

City of Milpitas Redevelopment Agency
Attachment B - Excluding Low and Moderate Income Housing Funds
Assets Transferred to the Successor Agency That Are Available to Distribute to Affected Taxing Entities

SUMMARY OF BALANCES AVAILABLE FOR ALLOCATION TO AFFECTED TAXING ENTITIES

Total amount of assets held by the successor agency as of June 30, 2012 (procedure 5)	\$ 119,333,195
Add the amount of any assets transferred to the city or other parties for which an enforceable obligation with a third party requiring such transfer and obligating the use of the transferred assets did not exist (procedures 2 and 3)	133,808,631
Less assets legally restricted for uses specified by debt covenants, grant restrictions, or restrictions imposed by other governments (procedure 6)	(4,007,648)
Less assets that are not cash or cash equivalents (e.g., physical assets) - (procedure 7)	(206,912,113)
Less balances that are legally restricted for the funding of an enforceable obligation (net of projected annual revenues available to fund those obligations) - (procedure 8)	-
Less balances needed to satisfy ROPS for the 2012-13 fiscal year (procedure 9)	(10,344,363)
Less the amount of payments made on July 12, 2012 to the County Auditor-Controller as directed by the California Department of Finance	-
Amount to be remitted to county for disbursement to taxing entities	<u>\$ 31,877,702</u>

City of Milpitas Redevelopment Agency
Attachment C - Summary of Assets, Excluding Low and Moderate Income Housing Funds
Transferred to the City and Other Parties

Item #	Cash and Cash Equivalents - Non Bond Proceeds	
1	Cash transferred to Milpitas Economic Development Corporation (MEDC), reported as improper cash transfers in the SCO Review Report (item #3 of Attachment E, less bond proceeds of \$7,880,227 listed separately below)	\$ 47,074,563
2	Less cash transferred back to Successor Agency as reported in the SCO Review Report (items #5, 6 and 7 of Attachment E, excluding bond proceeds listed below)	\$ (7,615,771)
3	Less cash transferred back to Successor Agency subsequent to the SCO Review Report (item #8 of Attachment E)	\$ (7,628,028)
	Net remaining cash transferred to the City and Other Parties	\$ 31,830,764
	Bond Proceeds	
4	1997 TABs and 2003 TABs bond proceeds, reported as improper cash transfers in the SCO Review Report (part of item #3 of Attachment E)	\$ 7,880,227
5	Unused 1997 TABs bond proceeds (item #4 of Attachment E)	\$ 397,806
6	Less bond proceeds transferred back to Successor Agency subsequent to the SCO Review Report (part of item #5 of Attachment E)	\$ (4,270,385)
	Net remaining bond proceeds transferred to the City and Other Parties	\$ 4,007,648
	Non Cash Assets	
7	GASB 31 fair value adjustment (item #2 of Attachment E)	\$ 1,013,973
8	Loans to the City of Milpitas (item #1 of Attachment E)	\$ 6,998,206
9	Property held for resale transferred to City (item #3 of Attachment D)	\$ 1,792,200
10	Property held for resale transferred to City (item #4 of Attachment D)	\$ 6,988,800
11	Land (items #5 through 9 of Attachment D)	\$ 15,404,570
12	Building and capital improvements (item #10 of Attachment D)	\$ 72,761,270
13	Less non cash assets transferred back to Successor Agency subsequent to the SCO Review Report (item #11 of Attachment D)	\$ (6,988,800)
	Net non cash assets transferred to the City and Other Parties	\$ 97,970,219
	Total assets transferred to the City and other parties for which an enforceable with a third party requiring such transfer and obligating the use of the transferred assets did not exist (procedures 2 and 3)	\$ 133,808,631

City of Milpitas Redevelopment Agency
Attachment D - Excluding Low and Moderate Income Housing Funds
Asset Transfers to the City of Milpitas for the Period January 1, 2011 Through January 31, 2012

Asset Description	Name of the recipient	Date of Transfer	Book value of asset at date of transfer	Describe the purpose of the transfer and specify the enforceable obligation or other legal requirement requiring such transfer and the date of such requirement.	Finding	
Cash:						
1	Cash	City of Milpitas	2/28/2011	\$ 394,439	To return unused City funds released from capital improvement projects due to completion of projects under budget.	No findings as a result of this procedure.
2	Cash	City of Milpitas	12/31/2011	2,274,098	Reimbursement of employee costs from 7/1/11 through 12/31/11, pursuant to a Cooperation Agreement with the City dated 5/18/76. This item was listed on the EOPS.	No findings as a result of this procedure.
Land and Property held for Resale						
3	Property held for resale	City of Milpitas	3/7/2011	1,792,200	Section 34176 authorizes the transfer of housing assets other than cash to the City if the City elects to perform the housing functions. The asset listed herein was approved as Housing Assets by the State Dept. of Finance. This property was subsequently transferred to the Milpitas Housing Authority which was formed to perform the housing functions.	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office, refer to attached Exhibit 1.
4	Property held for resale	City of Milpitas	3/7/2011	6,988,800	The transfer helped implement the redevelopment plans within Milpitas and facilitated the elimination of blight and/or the provision of affordable housing, consistent with redevelopment law at the time of the transfer. On 11/20/12, the City Council authorized transfer of this property back to the Successor Agency. Staff will implement the transfer as soon as possible.	According to City's accounting records, this item had been transferred back to the Successor Agency by June 30, 2012.
5	Land - 230 Main Street	City of Milpitas	3/7/2011	6,800,000	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
6	Land - Sports Center Site	City of Milpitas	3/7/2011	7,393,308	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
7	Land - Public Works Building Site	City of Milpitas	3/7/2011	770,131	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
8	Land - Cracolice Site	City of Milpitas	3/7/2011	39,441	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
9	Land - 86 N. Main Street	City of Milpitas	3/7/2011	401,690	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
10	Building and capital improvements	City of Milpitas	6/30/2011	72,761,270	See #4 above	This item had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
11	Property held for resale	City of Milpitas	6/30/2012	(6,988,800)	Property held for resale that was transferred back to the Successor Agency by June 30, 2012 (see item #4 above).	No findings as a result of this procedure.
Total Assets Transferred to the City of Milpitas				92,626,577		
Transfers with no findings noted (items #1 and #2)				<u>(2,668,537)</u>		
Total Assets to be returned to Successor Agency				<u>\$ 89,958,040</u>		

City of Milpitas Redevelopment Agency
Attachment E - Excluding Low and Moderate Income Housing Funds
Asset Transfers to the Other Public Agencies for the Period January 1, 2011 Through January 31, 2012

	Asset Description	Name of the recipient	Date of Transfer	Book value of asset at date of transfer	Describe the purpose of the transfer and specify the enforceable obligation or other legal requirement requiring such transfer and the date of such requirement.	Finding
1	Advance to other funds net of deferred interest revenue	Milpitas Economic Dev. Corp.	3/7/2011	\$ 6,998,206	The transfer helped implement the redevelopment plans within Milpitas and facilitated the elimination of blight and/or the provision of affordable housing, consistent with redevelopment law at the time of the transfer.	The City had been ordered by the State Controller's Office to transfer \$6,079,161 in loans made to the City back to the Successor Agency. Refer to attached Exhibit 1. Also, included in the book value is accrued interest in the amount of \$919,045 as of June 30, 2012.
2	Cash - GASB 31 market value gain	Milpitas Economic Dev. Corp.	3/7/2011	1,013,973	See explanation on item 1.	This item represents GASB 31 fair value adjustment that had been ordered to transfer back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
3	Cash	Milpitas Economic Dev. Corp.	3/7/2011-6/30/2011	54,954,790	See explanation on item 1.	This item includes \$47,074,563 of non bond proceeds and \$7,880,277 restricted bond proceeds that had been ordered back to the Successor Agency by the State Controller's Office. Refer to attached Exhibit 1.
4	Cash	Milpitas Economic Dev. Corp.	1/31/2012	397,806	Unused, restricted 1997 TABS bond proceeds released from capital improvement project due to completion of project under budget.	Surplus amount due to project under budget funded by former RDA funds should be transferred to the Successor Agency.
5	Cash	Milpitas Economic Dev. Corp.	6/30/2011	(9,707,450)	On 6/30/11 & 1/31/12 respectively, cash was transferred from the Milpitas Economic Development Corporation to the former RDA for reimbursement of redevelopment expenditures incurred by the former RDA.	This item represents cash that had been transferred back to the Successor Agency and includes \$4,270,385 of bond proceeds, as reported in the State Controller's Report.
6	Cash	Milpitas Economic Dev. Corp.	1/31/2012	(1,061,094)	On 6/30/11 & 1/31/12 respectively, cash was transferred from the Milpitas Economic Development Corporation to the former RDA for reimbursement of redevelopment expenditures incurred by the former RDA.	This item represents cash that had been transferred back to the Successor Agency, as reported in the State Controller's Report.
7	Cash	Milpitas Economic Dev. Corp.	1/31/2012	(1,117,612)	On 6/30/11 & 1/31/12 respectively, cash was transferred from the Milpitas Economic Development Corporation to the former RDA for reimbursement of redevelopment expenditures incurred by the former RDA.	This item represents cash that had been transferred back to the Successor Agency, as reported in the State Controller's Report.
8	Cash	Milpitas Economic Dev. Corp.	1/31/2012	(7,628,028)	On 6/30/11 & 1/31/12 respectively, cash was transferred from the Milpitas Economic Development Corporation to the former RDA for reimbursement of redevelopment expenditures incurred by the former RDA.	This item represents cash that had been transferred back to the Successor Agency, as of June 30, 2012.
Total Assets Transferred to the MEDC				<u>\$ 43,850,591</u>		

**City of Milpitas Redevelopment Agency
Attachment F - Condensed Summary of Financial Data**

	Modified Accrual Basis of Accounting			Accrual Basis of Accounting
	Redevelopment Agency 6/30/2010	Redevelopment Agency 6/30/2011	Redevelopment Agency 1/31/2012	Successor Agency 6/30/2012
Assets:				
Cash	\$ 53,910,946	\$ 12,063,092	\$ 19,719,420	\$ 16,973,858
Restricted cash	11,524,668	-	-	-
Accounts receivable	24,818	196	-	24,954
Due from other governments	461,321	163,221	-	-
Accrued interest receivable	322,378	40,049	-	-
Loans receivable	27,692,642	29,832,457	29,775,732	-
Advance to the City	6,389,612	8,925,177	8,925,178	-
Prepays and deposits	87,573	19,690	-	-
Property held for resale	21,526,203	-	17,199,645	6,988,800
Capital assets	-	-	-	101,928,140
Total Assets	\$ 121,940,161	\$ 51,043,882	\$ 75,619,975	\$ 125,915,752
Liabilities:				
Accounts payable	\$ 1,912,870	\$ 537,581	\$ 10,523	\$ -
Accrued payroll	59,314	46,924	-	-
Refundable deposits	3,721	2,500	-	-
Deferred revenue	28,003,093	30,157,634	30,100,910	-
Advance from other funds	-	8,925,177	8,925,178	-
Interest payable	-	-	-	2,657,845
Long-term obligations	-	-	-	204,109,716
Total Liabilities	29,978,998	39,669,816	39,036,611	206,767,561
Equity	91,961,163	11,374,066	36,583,364	(80,851,809)
Total Liabilities + Equity	\$ 121,940,161	\$ 51,043,882	\$ 75,619,975	\$ 125,915,752
	Redevelopment Agency 12 Months Ended 6/30/2010	Redevelopment Agency 12 Months Ended 6/30/2011	Redevelopment Agency 7 Months Ended 1/31/2012	Successor Agency 5 Months Ended 6/30/2012
Total revenues	\$ 41,712,562	\$ 41,380,961	\$ 16,924,125	\$ 6,710,558
Total expenditures/expenses	50,180,447	39,284,317	15,392,019	9,256,124
Total transfers, net	(5,356,809)	(82,683,741)	23,677,192	-
Extraordinary loss from RDA Dissolution	-	-	-	(78,306,243)
Net change in equity	(13,824,694)	(80,587,097)	25,209,298	(80,851,809)
Beginning Equity	105,785,857	91,961,163	11,374,066	-
Ending Equity	\$ 91,961,163	\$ 11,374,066	\$ 36,583,364	\$ (80,851,809)
Reconciliation of the former Agency Ending Equity at 1/31/2012 to Successor Agency Beginning Equity at 2/1/2012.				
Redevelopment Agency ending equity			\$ 36,583,364	
Transferred to the Housing Successor			(17,199,645)	
Extraordinary loss from RDA dissolution			(19,383,719)	
Successor Agency, beginning equity			\$ -	
Other Information	Redevelopment Agency 6/30/2010	Redevelopment Agency 6/30/2011	Redevelopment Agency 1/31/2012	Successor Agency 6/30/2012
Capital Assets as of end of year	\$ 190,797,353	\$ 98,453,746	\$ 101,928,140	\$ 101,928,140
Interest Payable as of end of year	\$ 2,787,569	\$ 2,727,628	\$ 2,657,845	\$ 2,657,845
Long term debt as of end of year	\$ 234,322,547	\$ 226,143,204	\$ 219,178,724	\$ 204,109,716

City of Milpitas Redevelopment Agency
Attachment G - Successor Agency Assets, Excluding Low and Moderate Income Housing Fund
Held by the Successor Agency at June 30, 2012

	<u>June 30, 2012</u>
Assets:	
Cash from former RDA, excluding Low and Moderate Income Housing Funds	\$ 10,391,301
Accounts receivable	24,954
Property held for resale (APN 028-34-001 to -094)	6,988,800
Land:	
Police Dept. (APN 022-02-047)	3,070,000
Fire Station# 4 (APN 086-02-061)	816,000
County Health Center Parking Garage (APN 022-08-003)	3,798,884
Senior Center (APN 028-24-044)	2,640,000
Fire Station#1 (APN 086-11-008)	6,240,000
Fire Station#3 (APN 026-13-033)	890,000
City Hall & Community Center (APN 028-12-023)	5,940,000
Capital improvement projects - construction in progress	<u>78,533,256</u>
Total Assets	<u><u>\$ 119,333,195</u></u>

City of Milpitas Redevelopment Agency
Attachment H - Excluding Low and Moderate Income Housing Funds
Restricted Assets Held by the Successor Agency at June 30, 2012

Identify the document requiring the restriction. For each restriction identified on these schedules, indicate in the period of time for which the restrictions are in effect. Note whether the restrictions are in effect until the related assets are expended for their intended purpose.

Asset	6/30/2012	Computation of Restricted Balance	Source for the computation of the restricted balance (i.e. accounting records or other supporting documentation)	
Unspent Bond Proceeds				
Unspent 1997 and 2003 TABs bond proceeds that had been ordered transferred back by the SCO (refer to Attachment C)	\$ 3,609,842	Bond proceeds	SCO Review Report (see attached Exhibit 1)	Bond covenants. Restrictions are in effect until the related assets are expended for their intended purpose.
Unused 1997 TABs bond proceeds	397,806	Bond proceeds	Accounting records	Bond covenants. Restrictions are in effect until the related assets are expended for their intended purpose.
Total unspent bond proceeds	<u>\$ 4,007,648</u>			

City of Milpitas Redevelopment Agency
Attachment I - Successor Agency Assets Other Than Cash and Cash Equivalents, Excluding Low and Moderate Income Housing Funds

Asset	6/30/2012	Basis	Description of the records provided supporting the book value listed and any differences noted.	Description of the methodology used to support the market value listed.
Non-cash assets held by Successor Agency at 6/30/12:				
Accounts receivable	\$ 24,954	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Property held for resale	6,988,800	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Land	23,394,884	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Capital improvement projects - construction in progress	78,533,256	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Non-cash assets held by Successor Agency	<u>108,941,894</u>			
Non-cash assets ordered back by State Controller:				
GASB 31 fair value adjustment, non cash assets that had been ordered to transfer back by SCO (refer to item #7 of Attachment C)	1,013,973	Fair Value	Accounting records. The fair value provision represents the difference between the investments on a cost basis and the estimated fair value of the investments. This difference represents an estimate of the unrealized gain or loss on the investment portfolio as of year-end that does not represent available resources for distribution.	Quoted market prices.
Loan to the City of Milpitas (refer to item #8 of Attachment C)	236,548	Book value	Loan made to the City of Milpitas Transit Area Fund for mitigation of transportation impact on 11/4/2008. The original loan was for \$200,000. This loan accrues 5% simple interest per year. It is due upon either (1) the end of 20 years (i.e., 11/4/2028) or (2) within 30 days, upon demand. No payments are required until it is due.	n/a book value used.
Loan to the City of Milpitas (refer to item #8 of Attachment C)	5,232,158	Book value	Loan made to the City of Milpitas Transit Area Fund for the purchase of water treatment capacity on 6/30/2009. The original loan was for \$4,549,161. This loan accrues 5% simple interest per year. It is due upon either (1) the end of 20 years (i.e., 6/30/2029) or (2) within 30 days, upon demand. No payments are required until it is due.	n/a book value used.
Loan to the City of Milpitas (refer to item #8 of Attachment C)	1,529,500	Book value	Loan made to the City of Milpitas Transit Area Fund for preparation of the Transit Area Plan on 7/1/2009. The original loan was for \$1,330,000. This loan accrues 5% simple interest per year. It is due upon either (1) the end of 20 years (i.e., 7/1/2029) or (2) within 30 days, upon demand. No payments are required until it is due.	n/a book value used.
Property held for resale (refer to item #9 of Attachment C)	1,792,200	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Land, non cash assets that had been ordered to transfer back by SCO (refer to item #11 of Attachment C)	15,404,570	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Building and capital improvements, non cash assets that had been ordered to transfer back by SCO (refer to item #12 of Attachment C)	72,761,270	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Subtotal of non-cash assets held at 6/30/12	<u>97,970,219</u>			
Total non-cash assets held at 6/30/12	<u>\$ 206,912,113</u>			

City of Milpitas Redevelopment Agency
Attachment J - Excluding Low and Moderate Income Housing Funds
Assets Held by the Successor Agency that are Required to Satisfy Obligations on the ROPS
Schedule for the Period July 1, 2012 through December 31, 2012

Assets Description	Balances as of June 30, 2012 need to be retained to satisfy obligations on the ROPS	ROPS Reference	Successor Agency's explanation as to why the Successor Agency believes that such balances are needed to satisfy the obligation.	Finding
Cash	\$ 10,073,521	ROPS II - Enforceable obligations paid with RPTTF - See ROPS II at Attachment K.	For payment of ROPS II items, refer to Attachment H	No findings as a result of this procedure.
Cash	370,731	ROPS II - Administrative costs paid with RPTTF - See ROPS II at Attachment K.	For payment of ROPS II items, refer to Attachment H	No findings as a result of this procedure.
Cash	(99,889)	DOF rejected admin costs	Not applicable	No findings as a result of this procedure.
Assets held by the successor agency that are required to pay enforceable obligations	<u>\$ 10,344,363</u>			

County of Santa Clara

Finance Agency
Controller-Treasurer Department



County Government Center
70 West Hedding Street, East Wing 2nd floor
San Jose, California 95110-1705
(408) 299-5200 FAX 287-7629

May 8, 2012

To: State Controller's Office
State Department of Finance
City of Milpitas RDA Successor Agency Oversight Board
City of Milpitas

Please find attached the Recognized Obligation Payment Schedules that have been certified by Finance Agency office pursuant to Health and Safety Code sections 34177(l)(2) and 34182 for the obligations payable by the City of Milpitas RDA Successor Agency between July 1 and December 31, 2012.

Please note that all administrative costs have been excluded from certification at this time as their approval is subject to a separate review and approval process by the Oversight Board.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Irene Lui". The signature is stylized and cursive.

Irene Lui
Controller-Treasurer

RECOGNIZED OBLIGATION PAYMENT SCHEDULE - CONSOLIDATED
FILED FOR THE JULY 1 to DECEMBER 31, 2012 PERIOD

Name of Successor Agency City of Milpitas

	Current	
	Total Outstanding Debt or Obligation	Total Due During Fiscal Year
Outstanding Debt or Obligation	Note B	\$ 10,073,521.30
	Total Due for Six Month Period	
Outstanding Debt or Obligation	\$ 10,073,521.30	
Available Revenues other than anticipated funding from RPTTF	\$ -	
Enforceable Obligations paid with RPTTF	\$ 10,073,521.30	
Administrative Cost paid with RPTTF	\$ Note A 370,730.78	
Pass-through Payments paid with RPTTF	\$ -	
Administrative Allowance (greater of 3% of anticipated Funding from RPTTF or 250,000. Note: Calculation should not include pass-through payments made with RPTTF. The RPTTF Administrative Cost figure above should not exceed this Administrative Cost Allowance figure)	\$ 302,205.64	

Note A: Administrative budget is subject to the approval of the Oversight Board .

Note B: This amount was provided by the Successor Agency and will be certified after completion of a review of the assets and liabilities.

Certification of Oversight Board Chairman:
Pursuant to Section 34177(l) of the Health and Safety code,
I hereby certify that the above is a true and accurate Recognized
Enforceable Payment Schedule for the above named agency.

Name Title

Signature Date

RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34177 (*)

Project Name / Debt Obligation	Contract/Agreement Execution Date	Payee	Description	Project Area	Note B Total Outstanding Debt or Obligation	Note C Total Due During Fiscal Year 2012-2013**	*** Funding Source	Payable from the Redevelopment Property Tax Trust Fund (RPTTF)							
								Payments by month							
								July 2012	Aug 2012	Sept 2012	Oct 2012	Nov 2012	Dec 2012	Total	
1) 2003 Tax Allocation Bonds	11/20/03	US Bank	Bonds issue to fund redelopment projects	Proj. Area #1	250,982,200.63	9,639,104.38	RPTTF		9,639,104.38						9,639,104.38
2) Contract for consulting services	11/11/98	Arbitrage Compliance Specialists	Calculation of bond arbitrage	Proj. Area #1	47,250.00	1,500.00	RPTTF				1,500.00				1,500.00
3) Contract for consulting services	11/20/03	US Bank	Adm fees for debt services	Proj. Area #1	82,950.00	3,950.00	RPTTF				800.00		3,150.00		3,950.00
4) Contract for consulting services	06/17/03	MuniServices LLC	Property Tax audit fee	Proj. Area #1	100,000.00	25,000.00	RPTTF							25,000.00	25,000.00
5) Contract for Services	04/20/10	Prints Charles Reprographics	Graphic Reproduction Services #8198	Proj. Area #1	303.56	303.56	RPTTF							303.56	303.56
6) Contract for consulting services	06/21/11	Advanced Design Consultants	Design of Sports Center Lighting #8198	Proj. Area #1	2,550.00	2,550.00	RPTTF	1,000.00	800.00	750.00					2,550.00
7) Project Administration costs	04/25/12	City of Milpitas staff	Dept of energy grant #8198	Proj. Area #1	1,113.36	1,113.36	RPTTF	200.00	200.00	200.00		200.00	200.00	113.36	1,113.36
8) Financing Agreement	02/01/11	SunPower Corporation	Assistance per CRL 33444.6	Proj. Area #1	800,000.00	400,000.00	RPTTF		400,000.00						400,000.00
Totals - Form A (RPTTF Funding)					\$ 252,016,367.55	\$ 10,073,521.30	N/A	\$ 1,200.00	\$ 10,040,104.38	\$ 950.00	\$ 2,500.00	\$ 3,350.00	\$ 25,416.92	\$ 10,073,521.30	
Totals - Form B (Other Funding)					\$ -	\$ -	N/A	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Totals - Form C (Administrative Cost Allowance)					\$ 14,352,482.19	\$ 302,205.64	N/A	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 302,205.64	\$ 302,205.64	
Totals - Form D (Pass Thru Payments)					\$ -	\$ -	N/A	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Grand total - All Pages					\$ 266,368,849.74	\$ 10,375,726.94		\$ 1,200.00	\$ 10,040,104.38	\$ 950.00	\$ 2,500.00	\$ 3,350.00	\$ 327,622.56	\$ 10,375,726.94	

Obligation Payment Schedule

(ROPS) is to be completed by

**** All totals due during fiscal year and payment amounts are projected.**

***** Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012.)**

RPTTF - Redevelopment Property Tax Trust Fund

Bonds - Bond proceeds

Other - reserves, rents, interest earnings, etc

LMIHF - Low and Moderate Income Housing Fund

Admin - Successor Agency Administrative Allowance

Note A: The Administrative budget is subject to the approval of the Oversight Board.

Note B: This amount was provided by the Successor Agency and will be certified after completion of a review of the assets and liabilities.

Note C: This amount represents six months' obligation from July to December 2012.

RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34177 (*)

Project Name / Debt Obligation	Contract/Agreement Execution Date	Payee	Description	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2012-2013**	Funding Source ***	Payable from Other Revenue Sources							
								Payments by month							
								July 2012	Aug 2012	Sept 2012	Oct 2012	Nov 2012	Dec 2012	Total	
No reportable items															
Totals - LMIHF															\$ -
Totals - Bond Proceeds															\$ -
Totals - Other															\$ -
Grand total - This Page					\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

* The Preliminary Draft Recognized Obligation Payment Schedule (ROPS) is to be completed by 3/1/2012 by the successor agency, and subsequently be approved by the oversight board before the final ROPS is submitted to the State Controller and State Department of Finance by April 15, 2012. It is not a requirement that the Agreed Upon Procedures Audit be completed before submitting the final Oversight Approved ROPS to the State Controller and State Department of Finance.

** All total due during fiscal year and payment amounts are projected.

*** Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012.)
 RPTTF - Redevelopment Property Tax Trust Fund Bonds - Bond proceeds Other - reserves, rents, interest earnings, etc
 LMIHF - Low and Moderate Income Housing Fund Admin - Successor Agency Administrative Allowance

Name of Redevelopment Agency: **City of Milpitas**

FORM C - Administrative Cost Allowance Paid With Redevelopment Property Tax Trust Fund (RPTTF)

Project Area(s) Project Area No. 1

RECOGNIZED OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34177 (*)

Project Name / Debt Obligation	Payee	Description	Project Area	Note B Total Outstanding Debt or Obligation	Note C Total Due During Fiscal Year 2012-2013**	Funding Source **	Payable from the Administrative Allowance Allocation ****						
							Payments by month						
							July 2012	Aug 2012	Sept 2012	Oct 2012	Nov 2012	Dec 2012	Total
1) Administration Costs	City of Milpitas	Successor Agency Adm Costs - staff	Proj. Area #1	12,708,570.00	302,584.98	RPTTF	50,430.83	50,430.83	50,430.83	50,430.83	50,430.83	50,430.83	302,584.98
2) Administration Costs	ABAG PLAN	Property Insurance	Proj. Area #1	769,561.80	36,645.80	RPTTF	36,645.80						36,645.80
3) Administration Costs	Various vendors	Copier lease, printing, storage, office equip	Proj. Area #1	367,500.00	8,749.98	RPTTF	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	8,749.98
4) Administration Costs	PG&E	Utility Costs	Proj. Area #1	200,550.00	4,774.98	RPTTF	795.83	795.83	795.83	795.83	795.83	795.83	4,774.98
5) Administration Costs	ABAG POWER	Utility Costs	Proj. Area #1	26,250.00	625.02	RPTTF	104.17	104.17	104.17	104.17	104.17	104.17	625.02
6) Administration Costs	City of Milpitas	Utility Costs	Proj. Area #1	42,000.00	1,000.02	RPTTF	166.67	166.67	166.67	166.67	166.67	166.67	1,000.02
7) Reimbursement Agreement	City of Milpitas	Maze & Assoc RDA Financial Audit fees	Proj. Area #1	220,500.00	7,350.00	RPTTF			2,625.00	4,725.00			7,350.00
8) Contract for consulting services	Murphy & Associates	Redevelopment legal services	Proj. Area #1	17,550.39	9,000.00	RPTTF	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	9,000.00
Totals - This Page				\$ 14,352,482.19	\$ 370,730.78	N/A	\$ 91,101.63	\$ 54,455.83	\$ 57,080.83	\$ 59,180.83	\$ 54,455.83	\$ 54,455.83	\$ 370,730.78

Note A Administrative cost 3% of RPTTF \$302,205.64

* The Preliminary Draft Recognized Obligation Payment Schedule (ROPS) is to be completed by 3/1/2012 by the successor agency, and subsequently be approved by the oversight board before the final ROPS is submitted to the State Controller and State Department of Finance by April 15, 2012. It is not a requirement that the Agreed Upon Procedures Audit be completed before submitting the final Oversight Approved ROPS to the State Controller and State Department of Finance.

** All total due during fiscal year and payment amounts are projected.

*** Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012.)

RPTTF - Redevelopment Property Tax Trust Fund Bonds - Bond proceeds Other - reserves, rents, interest earnings, etc

LMIHF - Low and Moderate Income Housing Fund Admin - Successor Agency Administrative Allowance

**** - Administrative Cost Allowance caps are 5% of Form A 6-month totals in 2011-12 and 3% of Form A 6-month totals in 2012-13. The calculation should not factor in pass through payments paid for with RPTTF in Form D.

Note A: The Administrative budget is subject to the approval of the Oversight Board.

Note B: This amount was provided by the Successor Agency and will be certified after completion of a review of the assets and liabilities.

Note C: This amount represents six months' obligation from July to December 2012.

Name of Redevelopment Agency City of Milpitas

FORM D - Pass-Through Payments

Project Area(s) RDA Project Area All

OTHER OBLIGATION PAYMENT SCHEDULE
Per AB 26 - Section 34177 (*)

Project Name / Debt Obligation	Payee	Description	Project Area	Total Outstanding Debt or Obligation	Total Due During Fiscal Year 2012-2013**	Source of Fund***	Pass Through and Other Payments ****						
							Payments by month						
							July 2012	Aug 2012	Sept 2012	Oct 2012	Nov 2012	Dec 2012	Total
No reportable items													
Totals - Other Obligations				\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

* The Preliminary Draft Recognized Obligation Payment Schedule (ROPS) is to be completed by 3/1/2012 by the successor agency, and subsequently be approved by the oversight board before the final ROPS is submitted to the State Controller and State Department of Finance by April 15, 2012. It is not a requirement that the Agreed Upon Procedures Audit be completed before submitting the final Oversight Approved ROPS to the State Controller and State Department of Finance.

** All total due during fiscal year and payment amounts are projected.

*** Funding sources from the successor agency: (For fiscal 2011-12 only, references to RPTTF could also mean tax increment allocated to the Agency prior to February 1, 2012.)

RPTTF - Redevelopment Property Tax Trust Fund Bonds - Bond proceeds Other - reserves, rents, interest earnings, etc

LMIHF - Low and Moderate Income Housing Fund Admin - Successor Agency Administrative Allowance

**** - Only the January through June 2012 ROPS should include expenditures for pass-through payments. Starting with the July through December 2012 ROPS, per HSC section 34183 (a) (1), the county auditor controller will make the required pass-through payments prior to transferring money into the successor agency's Redevelopment Obligation Retirement Fund for items listed in an oversight board approved ROPS.

MILPITAS REDEVELOPMENT AGENCY

ASSET TRANSFER REVIEW

Review Report

January 1, 2011, through January 31, 2012



JOHN CHIANG
California State Controller

August 2012



JOHN CHIANG
California State Controller

August 28, 2012

Thomas C. Williams, City Manager
City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035

Dear Mr. Williams:

Pursuant to Health and Safety Code (H&S) code section 34167.5, the State Controller's Office (SCO) reviewed all asset transfers made by the Milpitas Redevelopment Agency to the City of Milpitas or any other public agency during the period January 1, 2011, through January 31, 2012. As you know, this statutory provision explicitly states that, "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 returned to the Milpitas Redevelopment Successor Agency.

The 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 any rights to payment of any kind. We also reviewed and determined whether any unallowable transfers of assets to the City of Milpitas or any other public agencies have been reversed.

Our review disclosed that the Milpitas Redevelopment Agency transferred \$175,613,510 in assets. This included unallowable transfers of \$147,108,600, or 83.77% of assets to the City of Milpitas and the Milpitas Economic Redevelopment Corporation. Pursuant to H&S code section 34167.5 the City of Milpitas and the Milpitas Economic Development Corporation are ordered to reverse all unallowable transfers identified in this report and return them to the Milpitas Redevelopment Successor Agency.

Additionally, our review identified \$87,622,392 of Milpitas Redevelopment Agency assets that have not yet been transferred to any agency and the City of Milpitas is ordered to transfer these assets to the Milpitas Redevelopment Successor Agency.

If you have any questions, please contact Steven Mar, Chief, Local Governments Audits Bureau, at (916) 324-7226.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Thomas C. Williams, President
Milpitas Redevelopment Successor Agency
Thomas C. Williams, President
Milpitas Economic Development Corporation
Don Gage, Chairman
Oversight Board-Milpitas RDA Successor Agency
Vinod Sharma, Director of Finance
County of Santa Clara
Irene Lui, Controller-Treasurer
County of Santa Clara
Steve Szalay, Local Government Consultant
California Department of Finance
Richard J. Chivaro, Chief Counsel
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 Milpitas Redevelopment Agency for the period of January 1, 2011, through January 31, 2012. Our review included, but was not limited to, real and personal property, cash funds, accounts receivable, deeds of trust and mortgages, contract rights, and all rights to payments of any kind from any source.

Our review disclosed that the Milpitas Redevelopment Agency (RDA) transferred \$175,613,510 in assets, including unallowable transfers of \$147,108,600, or 83.77% of the transferred assets. Those assets must be returned to the Successor Agency. Additionally, \$87,622,392 of Milpitas Redevelopment Agency assets have not yet been transferred to the Successor Agency and must be transferred 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.

On June 27, 2012, the Governor signed a trailer bill, AB 1484, which clarified provisions of ABX1 26, and imposed new tasks on county auditor-controllers and Successor Agencies related to redevelopment agency dissolution.

ABX1 26 and AB 1484 were codified in the Health and Safety Code (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," through the date at which the RDA ceases to operate, or January 31, 2012, whichever is earlier.

The SCO has identified transfers of assets that occurred during that period between the Milpitas Redevelopment Agency, the City of Milpitas, and/or other public agencies. By law, the State Controller 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 returned to the Successor Agency. In addition, the SCO may file a legal order to ensure compliance with this order.

Objectives, Scope, and Methodology

Our review objective was to determine whether asset transfers that occurred after January 1, 2011, through 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 Milpitas City Council, the Milpitas Redevelopment Agency, and the Milpitas Economic Development Corporation.
- 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 listing of all assets transferred between January 1, 2011, and January 31, 2012.
- Reviewed applicable financial reports to verify assets (capital, cash, property, etc.).

Assembly Bill 1484 (AB 1484) was passed on June 27, 2012, adding Health & Safety Code section 34178.8, which states “. . . the Controller shall review the activities of successor agencies in the state to determine if an asset transfer has occurred after January 31, 2012. . . .”

The SCO has not completed the review associated with AB 1484 because the ABX1 26 asset transfer review was completed prior to the passage of AB 1484.

Conclusion

Our review disclosed that the Milpitas Redevelopment Agency transferred \$175,613,510 in assets, including unallowable transfers of assets totaling \$147,108,600, or 83.77% of the transferred assets. Those assets must be returned to the Successor Agency. Additionally, \$87,622,392 of the Milpitas Redevelopment Agency assets have not yet been transferred to the Successor Agency and must be transferred to the Successor Agency.

Unallowable Assets Transferred:

Unallowable assets transferred to City of Milpitas (Schedule 1 and Attachment 1)	\$ 96,946,837
Unallowable assets transferred to the MEDC (Schedule 2 and Attachment 2)	<u>50,161,763</u>
Total unallowable assets transferred	<u>\$ 147,108,600</u>

Assets That Have Not Yet Been Transferred:

Milpitas Redevelopment Agency assets that have not been transferred to the Successor Agency (Schedule 3 and Attachment 3)	<u>\$ 87,622,392</u>
Grand total	<u>\$ 234,730,992</u>

The agencies named above, as recipients of the unallowable asset transfers, are ordered to immediately reverse the transfers and to return the assets identified in this report to the Successor Agency (see Schedules 1 and 2 and Attachments 1 and 2). Additionally, assets totaling \$87,622,392 that have not been transferred, must be transferred to the Successor Agency (see Attachment 3).

Details of our Findings and Orders of the Controller are in the Findings and Orders of the Controller section of this report. We also have included a detailed schedule of assets to be returned to, or transferred to, the Successor Agency.

**Views of
Responsible
Official**

We issued a draft audit report on July 23, 2012. Thomas Williams, City Manager/Successor Agency Executive Officer/Housing Authority Executive Officer, responded by letter dated August 6, 2012. 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 of Milpitas, the Milpitas Economic Development Corporation, Successor Agency, Successor Agency 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
Chief, Division of Audits

August 28, 2012

Findings and Orders of the Controller

FINDING 1— Unallowable asset transfers to the City of Milpitas

The Milpitas Redevelopment Agency made unallowable asset transfers of \$96,946,837 to the City of Milpitas. The purpose of these asset transfers was to protect the Milpitas Redevelopment Agency resources. All of the asset transfers occurred during the period January 1, 2011, through January 31, 2012, to the City of Milpitas, and the assets were not contractually committed to a third party prior to June 28, 2011. These assets consisted of properties held for resale and capital assets.

Unallowable asset transfers were as follows:

- On March 7, 2011, the Milpitas Redevelopment Agency transferred assets to the City of Milpitas, by Resolution RA 408, and these assets were accepted by the City of Milpitas, by Resolution 8070.

In the City of Milpitas and the Milpitas Redevelopment Agency joint meeting minutes of March 7, 2011:

- The Milpitas City Manager addressed the Milpitas City Council regarding the Governor's proposed budget, which he stated was expected to include a legislative proposal to do away with RDAs in the State. The Milpitas City Manager recommended a series of actions to insulate the Milpitas Redevelopment Agency's assets from the anticipated legislation.
- The Milpitas Economic Development Corporation Manager presented information, explaining that State legislation was expected to dissolve RDAs and that Governor Brown was expected to sign the legislation on March 9, 2011, thus the urgent need for the City of Milpitas to take action.
- The Milpitas Assistant City Attorney stated, "the purpose was to accomplish three main goals: protect land, protect financial resources, and ensure that economic development activity continued in Milpitas."
- Milpitas City Council Member Gomez remarked that the State was continuing to take from cities, which he viewed as "stealing." He stated that he would do all he could to protect assets.
- On March 28, 2011, the Milpitas Redevelopment Agency transferred assets to the City of Milpitas and the City of Milpitas accepted these assets by joint resolution RA 413/8077.

In the City of Milpitas and the Milpitas Redevelopment Agency joint meeting minutes of March 28, 2011:

The Milpitas Assistant City Attorney, “addressed the council to explain the next steps needed to protect assets of the Milpitas Redevelopment Agency, due to expected actions by the Governor in his budget proposal. . . .”

Pursuant to H&S Code section 34167.5, a redevelopment agency may not transfer assets to a city, county, city and county, or any other public agency after January 1, 2011. Those assets should be returned 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 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 that were funded by tax increment revenues of the dissolved 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, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset....”

Order of the Controller

Based on H&S Code section 34167.5, the City of Milpitas is ordered to reverse the transfer of assets, described in Schedule 1 and Attachment 1, in the amount of \$96,946,837, and return them 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) and 34181(a).

City’s Response

A. Finding and Order No. 1—Allegedly “Unallowable” Asset Transfers to the City of Milpitas

As a preliminary matter, the City, the Housing Authority and the Successor Agency strongly protest the suggestion in the Draft Report that the Milpitas public agencies engaged in unlawful activities at the time of the property transfers in question on March 7 and March 28, 2011. All transfers were done at duly-noticed public meetings that comported with all State law requirements, in particular the provisions of the Community Redevelopment Law and the Brown Act in effect at the time. Citations to new laws passed months after the transfers causes a false impression of bad intent— where none exists—by Milpitas public agency entities and should be withdrawn from the final report.

SCO's Comment

The SCO did not suggest that Milpitas public agencies deliberately engaged in unlawful activities. However, the intent of Milpitas public agencies to protect Milpitas Redevelopment Agency resources by transferring assets clearly is demonstrated by the joint minutes of the Milpitas City Council and the Milpitas Redevelopment Agency on March 7, 2011, and March 28, 2011. Asset transfers in the amount of \$96,946,837 are unallowable and must be returned to the Successor Agency.

City's Response

As to the substance of the Finding and Order No. 1, the City, the Housing Authority and the Successor Agency note that as to the Properties held for Resale List on Schedule 1 of the Draft Report, the 1432-1440 S. Main Street Property (APN 086-22-031) is an asset of the Milpitas Housing Authority and is currently awaiting determination of the Department of Finance as to whether it is a Housing Asset under AB 1484 and ABX1 26. If the State Department of Finance determines that the asset does not constitute a Housing Asset, it is the Housing Authority's understanding that the asset would then be ordered to be conveyed to the Successor Agency. The City, the Housing Authority and the Successor Agency therefore request that this part of the State Controller Draft Report be amended or stayed pending that determination.

SCO's Comment

Pursuant to ABX1 26 and AB 1484, only the Successor Agency, with direction from the Oversight Board and with Department of Finance approval, has the authority to transfer assets to the Housing Authority. The City must transfer the assets to the Successor Agency for disposition.

City's Response

Furthermore, as to the "assets" on the Capital Assets Transferred to the City List of Schedule 1 of the Draft Report, almost all facilities listed are public works projects such as fire stations and police stations and facility upgrades like building machinery and equipment and street resurfacing. As was stated in the City and Successor Agency's previous June 5, 2012 communication to the State Controller, such Public Works Assets were only recorded for accounting purposes as being "RDA assets," but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484.

SCO's Comment

The City's intent is not supported by the title information for the real property assets. Based on our review, the title of the real property assets was in the name of the RDA. Therefore, the City must transfer these assets to the Successor Agency for disposition.

City's Response

Furthermore, the Public Works Assets are all public facilities that were constructed for public use and benefit. The former RDA was permitted to wholly or partially fund City public works assets under Health & Safety Code section 33445, so long as such assets were publicly owned; the Community Redevelopment Law did not require the former RDA itself to own or hold title to the public improvements to fund them. Consistent with these rules, these assets were included in the City's Capital Improvement Plans and were always considered City assets as a legal matter.

Thus, while the Public Works Assets may have been funded in part by the RDA, the assets as a legal matter were owned and operated by the City. The Public Works Assets are therefore City property, not RDA property, and are not subject to State Controller jurisdiction and should not be included in the Draft Report.

Nonetheless, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code §34181(a).

SCO's Comment

We acknowledge the City's willingness to convey assets under protest to the Successor Agency. We recognize and agree that the Oversight Board can order assets with a "governmental purpose" to be transferred to the City. However, these assets transfers were not approved by the Successor Agency Oversight Board, as required by Health and Safety Code section §34181(a), and must be transferred to the Successor Agency for proper disposition.

City's Response

The City must also point out that several parcels listed on the Capital Assets were included in error. These errors were communicated to the State Controller audit staff on our response to the preliminary exit interview statement on June 5, 2012 and are repeated as follows:

Parcels of land listed below were never transferred to the City and instead, by operation of ABX1 26, transferred to the Successor Agency on February 1, 2012.

Parcel # 086-02-061 - \$559,057, Land – Fire Station No. 4

Parcel #028-04-047 (correct APN# 022-02-047) - \$694,896, Land – 1275 N. Milpitas (Police Station)

Parcel #022-08-042 (correct APN# 022-08-003) - \$2,677,297.50 Land and improvement -(correct description should be County Health Center Parking Garage)

Another parcel of land listed on the Capital assets schedule parcel #086-02-004 for \$5,110,381, described as Land – Alder Site Redev-Tasman was an accounting error. This is a duplication of the land listed as properties held for resale Alder Site Redevelopment #086-02-076 (correct APN# 086-02-086). The City will correct this error by deleting this value before the close of fiscal 2011-12 year-end accounting.

SCO's Comment

We have revised our finding to reflect the corrections noted.

City's Response

Two parcels of land listed both with parcel no. 086-11-022, described as Land-Elms Park, \$2,755,170 and Land-Alvarez/McDermontt, \$2,228,094 have always been City's assets but were accounted as former RDA's assets in error. The transfer was to correct the accounting error.

SCO's Comment

We have revised our finding to reflect the corrections noted.

**FINDING 2—
Unallowable transfers
to the Milpitas
Economic
Development
Corporation**

The Milpitas Redevelopment Agency transferred \$50,161,763 in assets, primarily cash (Schedule 2 and Attachment 2), to the newly created Milpitas Economic Development Corporation (MEDC) in March 2011. The purpose of the asset transfers was to protect the City of Milpitas Redevelopment Agency resources from elimination. All of the asset transfers to the MEDC occurred during the period of January 1, 2011, through January 31, 2012, and the assets were not contractually committed to a third party prior to June 28, 2011.

The unallowable asset transfers were as follows:

- On March 7, 2011, the City of Milpitas Redevelopment Agency transferred assets by Resolution RA 409 to the MEDC.

The joint meeting minutes of March 7, 2011, disclosed:

- The Milpitas City Manager addressed the Milpitas City Council regarding the Governor's proposed budget, which was expected to include a legislative proposal to eliminate RDAs in the State. The Milpitas City Manager recommended a series of actions to insulate the Milpitas Redevelopment Agency's assets from the anticipated legislation.
- The MEDC Manager presented information, explaining that the State was expected to dissolve RDAs and Governor Brown was expected to sign related legislation on March 9, 2011, thus the urgent need for the City of Milpitas to take action.

- The Milpitas Assistant City Attorney stated, “the purpose was to accomplish three main goals: protect land, protect financial resources, and ensure that economic development activity continued in Milpitas.”
- Milpitas City Councilmember Gomez remarked that the State was continuing to take from cities, which he viewed as “stealing.” He stated that he would do all he could to protect assets.

Pursuant to provisions of H&S Code 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 City of Milpitas contends that the MEDC is a public nonprofit corporation created to provide charitable or other public purposes and that transfers from the RDA to the MEDC are not prohibited under H&S Code section 34167.5. However, H&S Code section 34167.10 states the following:

34167.10. (a) Notwithstanding any other law, for purposes of this part and Part 1.85 (commencing with Section 34170), the definition of a city, county, or city and county includes, but is not limited to, the following entities:

- (1) Any reporting entity of the city, county, or city and county for purposes of its comprehensive annual financial report or similar report.
- (2) Any component unit of the city, county, or city and county.
- (3) Any entity which is controlled by the city, county, or city and county, or for which the city, county, or city and county is financially responsible or accountable.

(b) The following factors shall be considered in determining that an entity is controlled by the city, county, or city and county, and are therefore included in the definition of a city, county, or city and county for purposes of this part and Part 1.85 (commencing with section 34170):

- (1) The city, county, or city and county exercises substantial municipal control over the entity’s operations, revenues, or expenditures.
- (2) The city, county, or city and county has ownership or control over the entity’s property or facilities.
- (3) The city, county, or city and county and the entity share common or overlapping governing boards, or coterminous boundaries.
- (4) The city, county, or city and county was involved in the creation or formation of the entity.
- (5) The entity performs functions customarily or historically performed by municipalities and financed through levies of property taxes.
- (6) The city, county, or city and county provides administrative and related business support for the entity, or assumes the expenses incurred in the normal daily operations of the entity.

- (c) For purposes of this section, it shall not be relevant that the entity is formed as a separate legal entity, nonprofit corporation, or otherwise or is not subject to the constitution debt limitation otherwise applicable to a city, county, or city and county. The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and Part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.”

The current relationship between the City of Milpitas and the MEDC is described below:

- The MEDC is reported in the City of Milpitas’ comprehensive annual financial report (H&S Code section 34167.10 (a)(1)).
- The MEDC is a component unit of the City of Milpitas (H&S Code section 34167.10 (a)(2)).
- The Board of Directors for the MEDC is the City of Milpitas’ council members, who previously acted as the Board of the Milpitas Redevelopment Agency, and the corporate officers are all City of Milpitas and Milpitas Redevelopment Agency employees (H&S Code section 34167.10 (a)(3)).
- The City of Milpitas exercises substantial control over the MEDC’s operations, revenues, or expenditures (H&S Code section 34167.10 (b)(1)).
- The City of Milpitas has ownership or control over the MEDC’s property and facilities (H&S Code section 34167.10 (b)(2)).
- The City of Milpitas and the MEDC share common governing boards and have coterminous boundaries (H&S Code section 34167.10 (b)(3)).
- The MEDC was created by the City of Milpitas (H&S Code section 34167.10 (b)(4)).
- The specific charge given to the MEDC was to continue redevelopment functions, which historically were performed by the City of Milpitas and financed through levies of property taxes (H&S Code section 34167.10 (b)(5)).
- The City of Milpitas provides administrative and related business support for the MEDC (H&S Code section 34167.10 (b)(6)).

Order of the Controller

Based on H&S Code sections 34167.5 and 34167.10, the City of Milpitas is ordered to direct the MEDC to reverse the transfers of assets, which are described in Schedule 2 and Attachment 2, in the amount of \$50,161,763 and return them to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d) and (e) and 34181(a).

City's Response

B. Finding and Order No. 2—Allegedly “Unallowable” Transfers to the Milpitas Economic Development Corporation

The Draft report seeks to have the City “direct the MEDC to reverse the transfer of assets” which are described in Schedule 2. The MEDC is an independent legal entity; the City has no legal authority to compel or force the MEDC to convey assets. To the extent that AB 1484 attempts to undermine this separate legal status, it is unconstitutional and illegal.

Furthermore, notwithstanding the foregoing, it should be noted that as was stated in the June 5th response, the Finding and Order No. 2 also seeks the return of funds that came in part from non-redevelopment tax increment sources (e.g., grants and other City funds) and are therefore not subject to the clawback provisions of ABX1 26 and AB 1484.

SCO's Comment

The MEDC governing board members are the same governing board members for the City and the former RDA. In addition, the corporate officers for the MEDC are the same officers for the City and the former RDA. However, the SCO also will issue an order to the MEDC to reverse these transfers.

AB 1484 added H&S Code section 34167.10(c), which states, “The provisions in this section are declarative of existing law as the entities described herein are and were intended to be included within the requirements of this part and part 1.85 (commencing with section 34170) and any attempt to determine otherwise would thwart the intent of these two parts.”

Additionally, the City contends that redevelopment assets were funded with non-redevelopment sources. However, all redevelopment assets, regardless of funding source, must be transferred to the Successor Agency for disposition.

**FINDING 3—
RDA failed to transfer
assets to Successor
Agency**

The Milpitas Redevelopment Agency failed to transfer \$87,622,392 in assets to the Successor Agency by January 31, 2012. These assets, including cash and construction-in-process, are recorded on the Milpitas Redevelopment Agency’s ledgers and should have been transferred to the Successor Agency by January 31, 2012:

- Low and Moderate Income Housing Fund Balance – January 31, 2012, Fund 290 – \$8,543,276.
- Construction in Process – June 30, 2011 – \$79,079,116.

H&S Code section 34175(b) states, “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.”

H&S Code section 34177(d) states, “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.”

The construction-in-process projects all appear to be related to a governmental purpose. If so, their disposition would be governed by H&S Code section 34181 as follows:

“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 that were funded by tax increment revenues of the dissolved 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, and fire stations, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction or use of such an asset...”

In addition, the construction-in-process projects listed all appear to be in progress which indicates that H&S Code section 34177(I) may apply as well. Under that section, the Oversight Board is to “...continue to oversee development of properties until the contracted work has been completed or the contractual obligations of the former redevelopment agency can be transferred to other parties.”

Order of the Controller

Based on H&S Code section 34175 (b), the City of Milpitas is ordered to ensure that the remaining Milpitas Redevelopment Agency assets, which are described in Schedule 3 and Attachment 3, in the amount of \$87,622,392, plus any additional amounts for construction-in-process between July 1, 2011, and January 31, 2012, be transferred to the Successor Agency. The Successor Agency is directed to properly dispose of these assets in accordance with H&S Code sections 34177(d), (e) and (l), and 34181(a). In addition, in accordance with H&S Code section 34177 (d), the Successor Agency is directed to transmit the balance of the Low and Moderate Income Housing Fund to the Santa Clara County Auditor-Controller for distribution in accordance with H&S Code section 34188.

City's Response

C. Finding and Order No. 3—Assets that Allegedly Should Have Been Transferred to the Successor Agency

Cash Balance January 31, 2012, Fund 390 - \$5,035

Cash Balance January 31, 2012, Fund 290 - \$2,989

Cash Balance January 31, 2012, Fund 295 - \$2,500

City staff has previously responded to the State Controller audit staff that the cash balances listed above were all encumbered for accrued payroll, for expenses that were incurred prior to the dissolution of the Redevelopment Agency. Pursuant to ABX1 26, only unencumbered cash balance needs to be transferred to the Successor Agency.

SCO's Comment

Cash balances encumbered for accrued payroll are not subject to transfer to the Successor Agency. Therefore, we revised the finding accordingly. The Successor Agency should provide the documentation that these balances have been encumbered and/or expended to the Oversight Board for review and approval.

City's Response

*Low and Moderate Income Housing Cash Balance – January 31, 2012,
Fund 290 - \$20,299,243*

As of January 31, 2012, Low and Moderate Income Housing Fund did not have a cash balance of \$20,299,243. The City attempts to understand where the State Controller audit staff came up with this cash balance and can only conclude that they used the fund balance of the Low and Moderate Income Housing Fund as of June 30, 2011. The City wishes to clarify that fund balance which is the residual balance of assets minus liabilities do not necessarily equate to cash (see Attachment 2).

Attachment 3 is a reconciliation of the financial transactions of Fund 290 from July 1, 2011, through January 31, 2012. Pursuant to ABX1 26, on February 1, 2012, the cash component of the ending fund balance was transferred to the Successor Agency while the non-cash fund balance was transferred to the Successor Housing Agency.

SCO's Comment

We have revised our finding to reflect the correction noted to the cash balances. The city response was that the non-cash component was transferred to the Successor Housing Agency. However, H&S Code Section 34177 requires all unencumbered assets, which include cash as well as non-cash assets to be transferred to the county Auditor-Controller for distribution.

City's Response

Construction in Process — January 31, 2011 (2012?), - \$79,079,116

The “Construction in Process” assets in the Draft Report are apparently a reference to public works projects that have not yet been finally accepted by the City of Milpitas (i.e., public works facilities for which the one-year warranty period has not yet expired). As in the public works “assets” listed in Finding and Order No. 1, such projects were recorded by the former Milpitas Redevelopment Agency for only accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484. The same objections raised in the City's and the Successor Agency's response to the public works component of Finding and Order No. 1 are incorporated herein by reference.

Nonetheless, as in connection to the public works assets listed in Finding and Order No. 1, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health and Safety Code § 34181(a).

SCO's Comment

We recognize that the oversight board can order assets with a “governmental purpose” to be transferred to the City. However, these assets transfers were not approved by the Successor Agency Oversight Board, as required by Health and Safety Code section §34181(a), and must be transferred to the Successor Agency for proper disposition.

**Schedule 1—
Unallowable Transfers to the City of Milpitas**

Capital Assets ¹	\$ 88,165,837
Properties Held for Resale ¹	<u>8,781,000</u>
Total Unallowable Transfers – City	<u><u>\$ 96,946,837</u></u>

¹ Detail Listing of Assets on Attachment 1.

**Schedule 2—
Unallowable Transfers to the Milpitas
Economic Development Corporation (MEDC)**

Current Assets	
Cash	\$ (2,417,334)
Investments Specific Funds	7,477,843
Market Gain Special Fund	18,184
Investments Pooled (LAIF)	37,600,000
Market Gain	995,789
Advance to Other Funds	6,389,612
Deferred Revenue	(310,451)
Tax Increment	<u>12,294,281</u>
Total Transfer to the MEDC	62,047,924
Transferred back to RDA ¹	<u>(11,886,161)</u>
Total Unallowable Transfers – MEDC ²	<u>\$ 50,161,763</u>

¹ The amounts transferred back to the RDA from the MEDC were for RDA expenditures. The transfers were for \$9,707,455, \$1,061,094, and \$1,117,612, respectively.

² Detail Listing of Assets on Attachment 2.

**Schedule 3—
Assets that Should Have Been
Transferred to the Successor Agency**

Low and Moderate Income Housing Fund (Fund 290)	8,543,276
Construction in Process ¹	<u>79,079,116</u>
Total	<u>\$ 87,622,392</u>

¹ Detail Listing of Assets on Attachment 3.

Attachment 1—

Properties Held for Resale Transferred to the City On March 7, 2011

Description	Address	Parcel #	Amount
	1432 -1440 S. Main	086-22-031	1,792,200
SCVTA	Alder Site Redevelopment	086-02-076	<u>6,988,800</u>
Total	Property Held for Resale	Unallowable Transfers	8,781,000

Capital Assets Transferred to the City On 3/7/11 and 3/28/11

Asset Description	Parcel #/Project #	Amount
Land-Parcel 1 & 2/Ayer HS	029-17-015	1,232,218
Land-Parcel 3/Ayer HS	029-17-013	616,109
Land-Parcel 4/Ayer HS	029-17012	616,109
Land-Parcel 5/Ayer HS	029-17-011	616,109
Land-1265 N. Milpitas Blvd(Public Works)	022-02-012	770,131
Land-Parcel 6/Ayer HS	029-17-010	616,109
Land-Parcel 7/Ayer HS	029-17-009	616,109
Land-Parcel 8/Ayer HS	029-17-008	616,109
Land-Parcel 9/Ayer HS	029-17-007	616,109
Land-Parcel 10/Ayer HS	029-17-006	616,109
Land-Parcel 11/Ayer HS	029-17-005	616,109
Land-Parcel 12/Ayer HS	029-17-004	616,109
Land-N. Main Street(Cracolice/YMCA)	086-10-025	39,441
Land-86 N.Main Street(Rodriguez)	028-24-025	401,690
Land - Apton 230 N. Main	028-34-001 thru-0093	6,800,000
Bldg & Improv-Community Center	n/a	825,590
Bldg & Improv-City Library	n/a	950,195
Bldg & Improv-Police & Public Works	n/a	4,441,845
Bldg & Improv-Corporate Yard	n/a	1,082,335
Bldg & Improv-Milpitas Sport Center	n/a	2,506,828
Bldg & Improv-Tower & Training Facility	n/a	328,063
Bldg & Improv-Fire Station #4	n/a	148,164
Bldg & Improv-Civic Center	CP8026	29,696,480
Bldg & Improv-Milpitas Sports Center	CP8053	4,416,813
Bldg & Improv-Police Dept-Public Works	CP8066	698,196
Bldg & Improv-ADA Fire Stations	CP8067	14,350
Bldg & Improv-Haz Material Remediation-City of Milpitas	CP8074	295,963
Bldg & Improv-Fire Station Replacement	CP8089	3,806,255
Bldg & Improv-Telecommunications Infrastructure	CP8093	3,203,374
Bldg & Improv-Storm Water Pump Improvement	CP8106	100,843
Bldg & Improv-Senior Center Renovation	CP8134	640,143
Bldg & Improv-Gateway Improv Tasman Drive	CP8146	329,543

Asset Description	Parcel #/Project #	Amount
Bldg & Improv-MSC Master Plan Imprv Phase 1	CP8149	1,146,160
Bldg & Improv-Refinish City Garage Floor	CP8150	23,610
Bldg & Improv-Interim Senior Center Project	CP8151	580,150
Bldg & Improv-Sports Center Large Gym Improv	CP8160	841,874
Bldg & Improv-Sports Center Underwater Pool	CP8163	90,418
Bldg & Improv-Public Works Security	CP8173	92,390
Bldg & Improv-Interim Senior Ctr Re-roofing	CP8178	79,853
Bldg & Improv-Sports Center Swimming Pool	CP8180	220,363
Bldg & Improv-Corporation Yard Canopies	CP8183	610,213
Bldg & Improv-Library Arts	CP8189	165,639
Land Improv-Senior Center Parking Lot	CP8005	0.00
Land Improv-Jacklin Median-Escuela to 680	CP8007	0.00
Land Improv-New Corporation Yard	CP8010	91,151
Land Improv-Milpitas Sport Center-East Parking Lot	CP8017/8042	469,465
Land Improv-City Hall Grounds Renovation	CP8028	0.00
Land Improv-Milpitas Sport Center-Pool Deck Drains	CP8054/8078	17,203
Land Improv-Civic Ctr Pond & Filtration System	CP8071	8,336
Land Improv-Public Works/Corp Yard Parking Lot	CP8083	243,689
Land Improv-Community Center Tot Lot	CP8088	43,188
Land Improv-Softball Scoreboards-Gill Pk	CP8097	33
Land Improv-Corp Yard Non-point Modifications	CP8099	220,122
Land Improv-MSC Sport Field Modifications	CP8101	10,162
Land Improv-Senior Center Entrance Modifications	CP8104	86,777
Land Improv-Civic Center Walkway Repair	CP8119	23,104
Land Improv-MSC Phases 11 & 12	CP8128	1,434
Land Improv-Range Improvements	CP8136	63,929
Land Improv-Gateway Identification	CP8137	117,421
Land Improv-City Gateway Identification(New)	CP8137B	18,245
Land Improv-City Hall Pond Improvements	CP8141	1,103,092
Land Improv-City Hall Parking/Circulation	CP8143	625,944
Mach & Equip-Senior Center Remodeling	CP8006E	0.00
Mach & Equip-Computer Master Plan	CP8020E	0.00
Mach & Equip-Computer Master Plan	CP8020E1	0.00
Mach & Equip-Phone Equipment	CP8027E1	0.00
Mach & Equip-Emergency Operation Center Equip	CP8036	249,907
Mach & Equip-New Finance System	CP8107	2,631,679
Mach & Equip-Network Hardware & Software	CP8108E	0.00
Mach & Equip-Network Hardware & Software	CP8108E1	22,370
Mach & Equip-Desktop Technology	CP8109	2,229,224
Mach & Equip-New Permits System	CP8110	58,112
Mach & Equip-Computer Aided Draft	CP8112	2,537,250
Mach & Equip-Police Records Management	CP8113E	10,930
Mach & Equip-Police & Fire CAD System	CP8115E	138
Mach & Equip-Information Management System	CP8131	660,920
Mach & Equip-Public Information	CP8132	0.00
Mach & Equip-Berryesa Pump Station Improvements	CP8138	1,198,612
Mach & Equip-Oakcreek Pump Station	CP8140	229,594
Mach & Equip-City Hall Technology	CP8142	0.00
Mach & Equip-E-Commerce	CP8145	0.00
Mach & Equip-Evidence Freezer	CP8159	90,554
CIP-Calaveras/Abel Dual Left Turn Lanes	CP8155	129,060
CIP-Street Resurfacing Project 2009	CP8194	2,233,972.
		88,165,837

Attachment 2—

Unallowable Asset Transfers to the Milpitas Economic Development Corporation

Current Assets

Date	Account #	Type of Asset	Fund 390	Fund 391	Fund 392	Fund 395	Total
3/07/11	1000	Cash	(6,579,505.16)	3,759,786.63	400,230.00	2,154.46	(2,417,334)
3/07/11	1060	Investments Specific Funds				7,477,842.99	7,477,843
3/07/11	1067	Market Gain Specific Fund				18,184.28	18,184
3/07/11	1050	Investments Pooled	37,600,000.00				37,600,000
3/07/11	1057	Market Gain	995,788.91				995,789
3/07/11	1400	Advance to Other Funds	6,389,612.20				6,389,612
3/07/11	2400	Deferred Revenue	(310,451.20)				(310,451)
3/15/11	3981	Increment	2,343,848.85				2,343,849
3/31/11	3981	Increment	1,171,924.44				1,171,924
4/18/11	3981	Increment	4,330,140.33				4,330,140
4/29/11	3981	Increment	1,365,517.46				1,365,517
5/31/11	3981	Increment	54,117.46				54,117
6/30/11	3981	Increment	2,890,690.31				2,890,690
6/30/11	3981	Increment	138,043.52				138,044
			50,389,727.03	3,759,786.63	400,230.00	7,498,181.73	62,047,924
				Transfer to	EDC		62,047,924
				Transferred	Back to RDA		(9,707,455)
				Transferred	Back to RDA		(1,061,094)
				Transferred	Back to RDA		(1,117,612)
				Amount	Demanded	Back from EDC	50,161,763

Attachment 3—

Assets that have not been Transferred As of 1/31/12

Construction in Process

Description	Project Number	Committed	Amount Spent
CIP-Community Center Renovation	CP8102		445,736
CIP-Radio Replacement Plan	CP8125		1,075,073
CIP-Misc City Bldg Improvements	CP8135		953,163
CIP-Midtown Improvements	CP8154		2,385,545
CIP-Midtown Parking Garage	CP8161		12,095,507
CIP-Library Design	CP8162		36,950,597
CIP-Bart Extension Coordination & Planning	CP8164		472,418
CIP-Main Street Improvement	CP8165		7,283,814
CIP-N. Main Street EIR Mitigations	CP8169		623,650
CIP-Range Lead Containment System	CP8174		159,533
CIP-Senior Center	CP8176		10,644,675
CIP-City Building Improvement	CP8182		390,962
CIP-Storm Pump Station Improvement	CP8188		220,564
CIP-Green Facility Study	CP8190		72,973
CIP-Park Master Plan Improvement	CP8191		466
CIP-Carlo Street Ramp Project	CP8195		602,812
CIP-Sound wall Renovation	CP8196		212,014
CIP-Civic Center Site Improvement	CP8197		440,095
CIP-Department of Energy Grant Program	CP8198		806,460
CIP-Street Light Pole Improvement	CP8199		18,491
CIP-City Hall AV Equipment	CP9001		6,786
CIP-KP Infrastructure	CP-KB Dev		538,003
CIP-KP Infrastructure	CP-KB Dev		716
CIP-KP Infrastructure	CP-KB Dev		2,679,063
			79,079,116

Construction in Process as of June 30, 2011 totaled \$79,079,116; any additional Construction in Process from July 1, 2011 through January 31, 2012 needs to be transferred as well.

**Attachment 4—
City's Response to
Draft Audit Report**



CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

August 6, 2012

VIA EMAIL

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

RE: Milpitas Successor Agency, Milpitas Housing Authority and City Response to State Controller Draft Asset Transfer Review Report

The City of Milpitas Acting as the Successor Agency ("Successor Agency") to the former Milpitas Redevelopment Agency (sometimes referred to herein as the "RDA"), the Milpitas Housing Authority ("Housing Authority") and the City of Milpitas ("City") appreciates and welcomes the opportunity to comment and provide corrections to the Draft Asset Transfer Review Report (January 1, 2011 through January 31, 2012) (referred to herein as the "Draft Report").¹ These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with AB1X 26, AB 1484 and other applicable law. The Draft Report is attached hereto as Attachment 1.

The response provided herein does not waive the right of the Successor Agency, the Successor Housing Agency, and the City to later provide additional information or statements as part of the review process. The Successor Agency, the Successor Housing Agency and the City retain the right to raise new materials or positions as required. Furthermore, the State Controller's attention is directed to the public agencies' previous response, dated June 5, 2012, to a preliminary exit interview communication, which is incorporated herein by reference.

GENERAL RESPONSE

1. The City's, Housing Authority's and the Successor Agency's review of the State Controller Draft Report is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the City's and the Successor Agency's right to rely on other facts, documents, responses or information in the State Controller review process or at a later proceeding.
2. By making the accompanying responses and objections, the City, Housing Authority and the Successor Agency do not waive, and hereby expressly reserve, its right to assert any and all objections as to the State Controller findings and statements in the Draft Report, or in any other proceedings, on any and all grounds including, but not limited to, jurisdiction, scope, competency, relevancy, and materiality. Further, the City, the Housing Authority and the Successor Agency make the responses herein without in any way implying that they consider all

¹ It should be noted that the Milpitas Economic Development Corporation is a lawfully created nonprofit public benefit corporation and may respond by separate communication apart from the public agencies listed herein.

of the State Controller findings and statements to be legally valid or relevant or material to the subject matter of this action.

3. The City, the Housing Authority and the Successor Agency reserve the right to supplement, clarify, revise, or correct any or all of the responses and statements herein, and to assert additional information in one or more subsequent supplemental response(s).

SPECIFIC RESPONSES

A. Finding and Order No. 1—Allegedly “Unallowable” Asset Transfers to the City of Milpitas

As a preliminary matter, the City, the Housing Authority and the Successor Agency strongly protest the suggestion in the Draft Report that the Milpitas public agencies engaged in unlawful activities at the time of the property transfers in question on March 7 and March 28, 2011. All transfers were done at duly-noticed public meetings that comported with all State law requirements, in particular the provisions of the Community Redevelopment Law and the Brown Act in effect at the time. Citations to new laws passed months after the transfers causes a false impression of bad intent—where none exists—by Milpitas public agency entities and should be withdrawn from the final report.

As to the substance of the Finding and Order No. 1, the City, the Housing Authority and the Successor Agency note that as to the Properties held for Resale List on Schedule 1 of the Draft Report, the 1432-1440 S. Main Street Property (APN 086-22-031) is an asset of the Milpitas Housing Authority and is currently awaiting determination of the Department of Finance as to whether it is a Housing Asset under AB 1484 and ABX1 26. If the State Department of Finance determines that the asset does not constitute a Housing Asset, it is the Housing Authority’s understanding that the asset would then be ordered to be conveyed to the Successor Agency. The City, the Housing Authority and the Successor Agency therefore request that this part of the State Controller Draft Report be amended or stayed pending that determination.

Furthermore, as to the “assets” on the Capital Assets Transferred to the City List of Schedule 1 of the Draft Report, almost all facilities listed are public works projects such as fire stations and police stations and facility upgrades like building machinery and equipment and street resurfacing. As was stated in the City and Successor Agency’s previous June 5, 2012 communication to the State Controller, such Public Works Assets were only recorded for accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484.

Furthermore, the Public Works Assets are all public facilities that were constructed for public use and benefit. The former RDA was permitted to wholly or partially fund City public works assets under Health & Safety Code section 33445, so long as such assets were publicly owned; the Community Redevelopment Law did not require the former RDA itself to own or hold title to the public improvements to fund them. Consistent with these rules, these assets were included in the City’s Capital Improvement Plans and were always considered City assets as a legal matter.

Thus, while the Public Works Assets may have been funded in part by the RDA, the assets as a legal matter were owned and operated by the City. The Public Works Assets are therefore City property, not

RDA property, and are not subject to State Controller jurisdiction and should not be included in the Draft Report.

Notwithstanding, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code § 31.81(a).

The City must also point out that several parcels listed in the Capital Assets were included in error. These errors were communicated to the State Controller audit staff in our response to the preliminary call interview statement on June 5, 2012 and are repeated as follows:

Parcels of land listed below were never transferred to the City and instead, by operation of ABX1 26 transferred to the Successor Agency on February 1, 2012.

Parcel # 086-02-061 - \$559,057, Land - Fire Station No. 4
Parcel #028-04-047 (correct APN# 028-02-047) - \$694,896, Land - 1275 N. Milpitas (Police Station)
Parcel #027-08-040 (correct APN# 027-08-066) - \$2,677,397.50 Land and Improvement (correct description should be County Health Center Parking Garage)

Another parcel of land listed on the Capital assets schedule parcel #086-02-004 for \$5,110,381, described as Land - Alder Site Redevelopment was an accounting error. This is a duplication of the land owned by the City for the Alder Site Redevelopment #086-12-006 (correct APN# 086-02-086). The City will correct this error by deleting this value before the close of fiscal 2011-12 year-end accounting.

Two parcels of land listed both on fiscal year 086-11-079, described as Land-Doris Park \$2,755,176 and Land-Alvarez/McDerrizotti, \$2,228,094 have always been City's assets but were accounted as former RDA's assets in error. The transfer was to correct the accounting error.

B. Finding and Order No. 2--Allegedly "Unallowable" Transfers to the Milpitas Economic Development Corporation

The Draft report seeks to have the City "direct the MEDC to reverse the transfer of assets" which are described in Schedule 2. The MEDC is an independent legal entity; the City has no legal authority to compel or force the MEDC to convey assets. To the extent that AB 1484 attempts to undermine this separate legal status, it is unconstitutional and illegal.

Furthermore, notwithstanding the foregoing, I should be noted that as was stated in the June 5th response, the Finding and Order No. 2 also seeks the return of funds that came in part from non-redevelopment tax increment sources (e.g., grants and other City funds) and are therefore not subject to the carryback provisions of ABX1 26 and AB 1484.

C. Finding and Order No. 3—Assets that Allegedly Should Have Been Transferred to the Successor Agency

Cash Balances January 31, 2012 Fund 290 - \$5,033

Cash Balances January 31, 2012, Fund 291 - \$2,989

Cash Balances January 31, 2012, Fund 295 - \$2,500

City staff has previously responded to the State Controller audit staff that the cash balances listed above were all encumbered for accrued payroll, for expenses that were incurred prior to the dissolution of the Redevelopment Agency. Pursuant to ABX1 26, only unencumbered cash balance needs to be transferred to the Successor Agency.

Low and Moderate Income Housing Cash Balance – January 31, 2012, Fund 290 - \$20,299,243

As of January 31, 2012, Low and Moderate Income Housing Fund did not have a cash balance of \$20,299,243. The City attempts to understand where the State Controller audit staff came up with this cash balance and can only conclude that they used the fund balance of the Low and Moderate Income Housing Fund as of June 30, 2011. The City wishes to clarify that fund balance which is the residual balance of assets minus liabilities do not necessarily equate to cash (see Attachment 2).

Attachment 3 is a reconciliation of the financial transactions of Fund 290 from July 1, 2011 through January 31, 2012. Pursuant to ABX1 26, on February 1, 2012, the cash component of the ending fund balance was transferred to the Successor Agency while the non-cash fund balance was transferred to the Successor Housing Agency.

Construction in Process – January 31, 2011 (2012?), - \$79,079,116

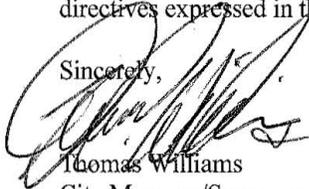
The “Construction in Process” assets in the Draft Report are apparently a reference to public works projects that have not yet been finally accepted by the City of Milpitas (i.e., public works facilities for which the one-year warranty period has not yet expired). As in the public works “assets” listed in Finding and Order No. 1, such projects were recorded by the former Milpitas Redevelopment Agency for only accounting purposes as being “RDA assets,” but as a legal matter have always been City assets and therefore do not fall under the clawback provisions of ABX1 26 and AB 1484. The same objections raised in the City’s and the Successor Agency’s response to the public works component of Finding and Order No. 1 are incorporated herein by reference.

Nonetheless, as in connection to the public works assets listed in Finding and Order No. 1, the City is willing to convey such assets under protest to the Successor Agency in a form satisfactory to the State Controller. Still, there is no need for such a conveyance, as such assets would undoubtedly be conveyed back to the City. See Health & Safety Code § 34181(a).

CONCLUSION

For these reasons, we respectfully request that the Office of the State Controller revise its findings and directives expressed in the Draft Report.

Sincerely,



Thomas Williams

City Manager/Successor Agency Executive Officer/Housing Authority Executive Officer

MILPITAS REDEVELOPMENT AGENCY
 GOVERNMENTAL FUNDS
 BALANCE SHEET
 JUNE 30, 2011

	Redevelopment Project	Housing Reserve	Total Governmental Funds
ASSETS			
Cash and investments available for operations (Note 3)	\$375,738	\$11,687,354	\$12,063,092
Restricted investments (Note 3)			
Receivables:			
Accounts	196		196
Due from other governments	163,221		163,221
Interest		40,049	40,049
Loans receivable (Note 5)		29,832,457	29,832,457
Advances to other funds (Note 4C)		8,925,177	8,925,177
Prepays and deposits	15,868	3,822	19,690
	<u>\$555,023</u>	<u>\$50,488,859</u>	<u>\$51,043,882</u>
LIABILITIES			
Accounts payable	\$517,556	\$20,025	\$537,581
Accrued payroll	37,468	9,456	46,924
Refundable deposits		2,500	2,500
Deferred revenue		30,157,634	30,157,634
Advances from other funds (Note 4C)	8,925,177		8,925,177
	<u>9,480,201</u>	<u>30,189,615</u>	<u>39,669,816</u>
FUND BALANCES			
Fund balances (Note 10)			
Nonspendable	15,868	3,822	19,690
Restricted for Low and Moderate Income Housing		20,295,422	20,295,422
Unassigned	(8,941,046)		(8,941,046)
	<u>(8,925,178)</u>	<u>20,299,244</u>	<u>11,374,066</u>
Total Liabilities and Fund Balances	<u>\$555,023</u>	<u>\$50,488,859</u>	

Amounts reported for Governmental Activities in the Statement of Net Assets are different from those reported in the Governmental Funds above because of the following:

CAPITAL ASSETS

Capital assets used in Governmental Activities are not current assets or financial resources and therefore are not reported in the Governmental Funds.

98,453,746

ACCRUAL OF NON-CURRENT REVENUES AND EXPENSES

Revenues which are deferred on the Fund Balance Sheets because they are not available currently are taken into revenue in the Statement of Activities.

30,157,634

LONG TERM ASSETS AND LIABILITIES

The assets and liabilities below are not due and payable in the current period and therefore are not reported in the Funds:

Long-term debt:

2003 Tax Allocation Bonds	(168,940,000)
Installment Purchase Agreement	(33,977,967)
Purchase and Sale Agreement	(23,225,237)
Interest payable	(2,727,628)

NET ASSETS OF GOVERNMENTAL ACTIVITIES

(\$88,885,386)

See accompanying notes to financial statements

Housing Reserve Fund (Fund 290)
Statement of Revenues, Expenditures and Changes in Fund Balance
7/1/2011-1/31/2012

Revenues	
Interest Income	\$ 104,614
Rental Income	20,429
Miscellaneous Revenue	946
	<u>145,989</u>
Program expenditures	
Indefinite of Homeless over Expenditures	421,073
	<u>(255,579)</u>
Other financing Sources (Uses)	
Proceeds from sale of property - 942 Garden - bcp	274,768
Start Year 2012 set aside from Tax increment Revenue	1,534,881
Fiscal Year excess housing tax-able adjustment - return to Project Fund	(3,807,033)
Operating Cost Reimbursement to City	11,032,751
Operating Trf to RHA project fund for debt service payment	(387,397)
Total Other Financing Uses	<u>(1,400,670)</u>
Net Change in Fund Balance	(1,600,546)
Fund Balance at 6/30/2011	20,901,249
Fund Balance at 1/31/2012 before asset transfers	<u>\$ 19,300,703</u>

Asset Transfers to Successor Agencies on February 1, 2012	
Cash to Successor Agency	\$ 10,287,419
Net Clean assets to Successor Housing Agency	8,313,273
Total Transfers	<u>\$ 18,600,692</u>
Transfer to Successor Housing Agency consists of:	
Advance to Other Funds	\$ 8,026,178
Loan Receivables	211,76732
Deferred Revenue	(30,157,634)
Total	<u>\$ 8,979,278</u>

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

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

***RA13**

RESOLUTION NO. RA327 / 7852

A JOINT RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY AND THE CITY COUNCIL OF THE CITY OF MILPITAS MEMORIALIZING THE INTERFUND ADVANCE OR LOAN POLICY

WHEREAS, the City of Milpitas ("City") and the Redevelopment Agency ("Agency") wish to formally memorialize the policy for the terms, conditions and requirements for advances or loans made between different City and Agency funds; and

WHEREAS, this policy shall apply to both past and future interfund advances or loans, absent specific direction to the contrary by the Agency Board or the City Council.

NOW, THEREFORE, the City Council of the City of Milpitas and the Board of Directors of the Redevelopment Agency of the City of Milpitas hereby find, determine, and resolve as follows:

1. The recitals set forth above are true and correct and incorporated herein by reference.
2. Interfund loan or advance transactions shall be subject to the following terms and conditions:
 - a. The amount of the advanced or borrowed principal shall be kept on file by the Director of Finance or his or her designee.
 - b. The term of the interfund advance or loan shall be twenty (20) years from the effective date of the authorized transaction.
 - c. The outstanding principal balance of the advance or loan shall accrue interest at the fixed rate of five percent (5%) simple interest per year. Interest shall not compound from year to year.
 - d. Principal and accrued interest shall be payable on demand within thirty (30) days after demand is made by the loaning agency to the borrowing agency, or if no demand is made, on the maturity date (i.e., after the end of the twenty-year period).
 - e. Borrowing agency may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due. Any partial prepayments shall be applied first to accrued but unpaid interest and then to principal.

PASSED AND ADOPTED this 7TH day of April 2009, by the following vote:

AYES: (5) Chair/Mayor Livengood, Vice Chair/Vice Mayor McHugh, and Agency Members/Councilmembers Giordano, Gomez and Polanski

NOES: (0) None

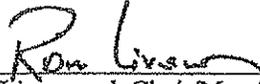
ABSENT: (0) None

ABSTAIN: (0) None

ATTEST:


 Mary Lavelle, Agency Secretary/City Clerk

APPROVED:


 Robert Livengood, Chair/Mayor

APPROVED AS TO FORM:


 Michael J. Ogaz, Agency Counsel/City Attorney

County of Santa Clara

Finance Agency

County Government Center
70 West Hedding Street, East Wing 2nd floor
San Jose, California 95110-1705
(408) 299-5205 FAX (408) 287-7629



January 12, 2013

Hon. John Chiang, State Controller
P.O. Box 942850
Sacramento, CA 94250

Ms. Ana Matosantos, Director
Department of Finance
915 L Street
Sacramento, CA 95814

City of Milpitas Successor Agency
455 E Calaveras Blvd
Milpitas, CA 95035

City of Milpitas Oversight Board
455 E Calaveras Blvd
Milpitas, CA 95035

**Re: ADDENDUM – Milpitas Successor Agency Due Diligence Review for All Funds
(Except Housing) Pursuant to Health and Safety Code Section 34179.5**

Dear State Controller, Department of Finance, Oversight Board, and Successor Agency:

In our Non-Housing Due Diligence Report (“DDR”) dated Friday, January 4, 2013, we noted that certain interfund advances owed by the City of Milpitas (“City”) to the Milpitas Redevelopment Agency (“RDA”) amounting to \$6,998,206 (inclusive of interest through June 30, 2012) were treated as non-cash and cash equivalent assets and therefore were excluded from the amount to be distributed to taxing entities.

Upon consideration of the comments provided by the City at the January 7, 2013, Oversight Board meeting, we requested a legal review of the report by the Office of the County Counsel, as counsel to the Auditor-Controller, regarding the treatment of the interfund advances. The City also questioned the treatment of a \$2,550,000 interfund advance funded in 2011 from assets initially transferred from the RDA to the Milpitas Economic Development Corporation. As mentioned in the DDR, the State Controller determined in its Review and Order that this transfer was unauthorized and, as such, we classified the advance as includable within the amount of cash and cash equivalents available for distribution to the taxing entities.

The terms of these four interfund advances are set forth in joint City/RDA Resolution No.

Board of Supervisors: Mike Wasserman, George Shirakawa, Dave Cortese, Ken Yeager, S. Joseph Simitian
County Executive: Jeffrey V. Smith

ADDENDUM – All Funds (Except Housing) Due Diligence Report for the Milpitas Successor Agency

Saturday, January 12, 2013

Page 2 of 2

RA327/7852, attached to the DDR as Exhibit 2. That Resolution provides that these advances “shall be payable on demand within thirty (30) days after demand is made by the loaning agency to the borrowing agency, or if no demand is made, on the maturity date (i.e., after the end of the twenty-year period).” Thus, these advances are both payable on demand and payable at a definite time.

Health and Safety Code section 34179.5(b)(1) defines “cash” and “cash equivalents” for the purposes of the DDR as including “payables on demand.” Commercial Code section 3108 classifies notes, advances, and loans as payable on demand or payable at a definite time. Subdivision (c) of Commercial Code section 3108 provides that instruments that are *both* payable at a fixed date and also payable on demand are classified as “payable on demand” until the fixed date arrives. Therefore, these advances are “cash equivalents” for the purposes of the DDR.

In light of this information, the Auditor-Controller, County Finance Agency staff, and Macias Gini & O’Connell LLP agree that an addendum to the report is required. We therefore are revising the DDR to remove the interfund advances from the deduction for non-cash and cash equivalent assets. Please find attached revised Attachments B, C, and I, which should be considered as replacements to the original report issued January 4, 2013.

Accordingly, the amount to be remitted to the Auditor-Controller for distribution to taxing entities pursuant to Health and Safety Code section 34179.6 is shown in Revised Attachment B as **\$38,875,908** as of June 30, 2012, plus interest earned on the unallowable transfers from the date of the transfers through June 30, 2012, plus interest earned on the entire amount from June 30, 2012, through the date of remittance, plus the additional interest due on the interfund advances after June 30, 2012, through the date of repayment.

Respectfully submitted,



Irene Lui, C.P.A.
Controller-Treasurer
County of Santa Clara

Attachments:

- Revised Attachment B
- Revised Attachment C
- Revised Attachment I

City of Milpitas Redevelopment Agency
REVISED Attachment B - Excluding Low and Moderate Income Housing Funds
Assets Transferred to the Successor Agency That Are Available to Distribute to Affected Taxing Entities

SUMMARY OF BALANCES AVAILABLE FOR ALLOCATION TO AFFECTED TAXING ENTITIES

Total amount of assets held by the successor agency as of June 30, 2012 (procedure 5)	\$	119,333,195
Add the amount of any assets transferred to the city or other parties for which an enforceable obligation with a third party requiring such transfer and obligating the use of the transferred assets did not exist (procedures 2 and 3)		133,808,631
Less assets legally restricted for uses specified by debt covenants, grant restrictions, or restrictions imposed by other governments (procedure 6)		(4,007,648)
Less assets that are not cash or cash equivalents (e.g., physical assets) - (procedure 7)		(199,913,907)
Less balances that are legally restricted for the funding of an enforceable obligation (net of projected annual revenues available to fund those obligations) - (procedure 8)		-
Less balances needed to satisfy ROPS for the 2012-13 fiscal year (procedure 9)		(10,344,363)
Less the amount of payments made on July 12, 2012 to the County Auditor-Controller as directed by the California Department of Finance		-
Amount to be remitted to county for disbursement to taxing entities	<u>\$</u>	<u>38,875,908</u>

City of Milpitas Redevelopment Agency
REVISED Attachment C - Summary of Assets, Excluding Low and Moderate Income Housing Funds
Transferred to the City and Other Parties

Item #	Cash and Cash Equivalents - Non Bond Proceeds	
1	Cash transferred to Milpitas Economic Development Corporation (MEDC), reported as improper cash transfers in the SCO Review Report (item #3 of Attachment E, less bond proceeds of \$7,880,227 listed separately below)	\$ 47,074,563
2	Less cash transferred back to Successor Agency as reported in the SCO Review Report (items #5, 6 and 7 of Attachment E, excluding bond proceeds listed below)	\$ (7,615,771)
3	Less cash transferred back to Successor Agency subsequent to the SCO Review Report (item #8 of Attachment E)	\$ (7,628,028)
8	Loans to the City of Milpitas (item #1 of Attachment E)	\$ 6,998,206
	Net remaining cash transferred to the City and Other Parties	\$ 38,828,970
	Bond Proceeds	
4	1997 TABs and 2003 TABs bond proceeds, reported as improper cash transfers in the SCO Review Report (part of item #3 of Attachment E)	\$ 7,880,227
5	Unused 1997 TABs bond proceeds (item #4 of Attachment E)	\$ 397,806
6	Less bond proceeds transferred back to Successor Agency subsequent to the SCO Review Report (part of item #5 of Attachment E)	\$ (4,270,385)
	Net remaining bond proceeds transferred to the City and Other Parties	\$ 4,007,648
	Non Cash Assets	
7	GASB 31 fair value adjustment (item #2 of Attachment E)	\$ 1,013,973
9	Property held for resale transferred to City (item #3 of Attachment D)	\$ 1,792,200
10	Property held for resale transferred to City (item #4 of Attachment D)	\$ 6,988,800
11	Land (items #5 through 9 of Attachment D)	\$ 15,404,570
12	Building and capital improvements (item #10 of Attachment D)	\$ 72,761,270
13	Less non cash assets transferred back to Successor Agency subsequent to the SCO Review Report (item #11 of Attachment D)	\$ (6,988,800)
	Net non cash assets transferred to the City and Other Parties	\$ 90,972,013
	Total assets transferred to the City and other parties for which an enforceable with a third party requiring such transfer and obligating the use of the transferred assets did not exist (procedures 2 and 3)	\$ 133,808,631

City of Milpitas Redevelopment Agency

REVISED Attachment I - Successor Agency Assets Other Than Cash and Cash Equivalents, Excluding Low and Moderate Income Housing Funds

Asset	6/30/2012	Basis	Description of the records provided supporting the book value listed and any differences noted.	Description of the methodology used to support the market value listed.
Non-cash assets held by Successor Agency at 6/30/12:				
Accounts receivable	\$ 24,954	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Property held for resale	6,988,800	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Land	23,394,884	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Capital improvement projects - construction in progress	78,533,256	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Non-cash assets held by Successor Agency	<u>108,941,894</u>			
Non-cash assets ordered back by State Controller:				
GASB 31 fair value adjustment, non cash assets that had been ordered to transfer back by SCO (refer to item #7 of Attachment C)	1,013,973	Fair Value	Accounting records. The fair value provision represents the difference between the investments on a cost basis and the estimated fair value of the investments. This difference represents an estimate of the unrealized gain or loss on the investment portfolio as of year-end that does not represent available resources for distribution.	Quoted market prices.
Property held for resale (refer to item #9 of Attachment C)	1,792,200	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Land, non cash assets that had been ordered to transfer back by SCO (refer to item #11 of Attachment C)	15,404,570	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Building and capital improvements, non cash assets that had been ordered to transfer back by SCO (refer to item #12 of Attachment C)	72,761,270	Book value	Accounting records and previously audited financial statements.	n/a book value used.
Subtotal of non-cash assets held at 6/30/12	<u>90,972,013</u>			
Total non-cash assets held at 6/30/12	<u>\$ 199,913,907</u>			

EXHIBIT B

Milpitas Entities' Response to DDR



CITY OF MILPITAS
OFFICE OF THE CITY MANAGER

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
PHONE: 408-586-3050, FAX: 586-3056, www.ci.milpitas.ca.gov

January 7, 2013

Milpitas Oversight Board

Re: City of Milpitas Successor Agency Agreed Upon Procedures and Findings

Dear Milpitas Oversight Board:

The City of Milpitas acting as Successor Agency ("Successor Agency") to the former Milpitas Redevelopment Agency and on its own behalf ("City") and the Milpitas Economic Development Corporation ("MEDC"), (collectively referred to as the "Milpitas Entities") appreciate the opportunity to comment and provide corrections to the Draft Agreed Upon Procedures and Findings Report. These comments are respectfully submitted to ensure that a proper review and report is prepared that complies with AB1x 26, AB 1484 and other applicable law.

The response provided herein does not waive the right of the Milpitas Entities to later provide additional information or statements as part of the review process. The Milpitas Entities retain the right to raise new materials or positions as required.

RESPONSES

Findings 2 & 3: Outstanding assets transferred to the City and MEDC had not been returned as of June 30, 2012, and are summarized in the Due Diligence Review Attachment C.

The Milpitas Entities object to report findings 2 & 3 for the following reasons:

A portion of the assets listed in the Due Diligence Review Attachment C (cash, bond proceeds, GASB 31 "fair value adjustment," and loan repayments receivable from the City, lines 1, 2, 3, 4, 5, 6, 7, and 8) were transferred to MEDC. MEDC is an independent, private entity, and any legislative attempt to change its status retroactively, such as through AB 1484, is unconstitutional. Because MEDC is an independent, private nonprofit organization, the City has no legal authority to compel or force the MEDC to return assets that were transferred in accordance with laws in existence at the time of transfer.

Furthermore, these findings rely on and accept without question the State Controller's "findings" and "orders" under Health and Safety Code section 34167.5 respecting these assets. To the extent, however, that the State Controller purported to order an organization such as MEDC that is not a "public agency" to return assets, or purported to order the City to recover assets from a private entity such as MEDC, this order exceeded the Controller's statutory authority and is therefore ineffective. In addition, even if MEDC were a "public agency" within the meaning of section 34167.5, the State Controller's order also exceeds his statutory authority to the extent it purports to order return of assets that were contractually committed to private third parties before the date of that order. As shown in the attached documentation, which was previously provided to the

Oversight Board and is provided here for your reference, nearly \$28 million in MEDC assets were already contractually committed to third parties by the time the State Controller made his order.

The Milpitas Entities also believe that the independent Due Diligence Review conducted by Macias, Gini & O'Connell LLP ("MGO") has been compromised. For example, a \$2,550,000 loan was advanced from the RDA to the City's Transit Area Fund prior to the dissolution of the RDA. The loan was approved by the RDA Board on August 3, 2010. Despite documentation provided to MGO that demonstrated this fact and MGO's initial agreement, their final review report chose to classify the loan as funds "improperly" transferred from the former RDA in 2011. For this reason, the obligation to repay this loan is not included in Attachment C, line 8 (or on Attachment I). This factually inaccurate finding was directly influenced by the Santa Clara County Counsel's opinion. The County Counsel, who is not an independent licensed accountant, should not be part of the Due Diligence Review process to determine the classification of assets.

The asset listed in the Due Diligence Review Attachment C, line 9 (and also on Attachment I) has previously been determined by the Department of Finance ("DOF") to be a Housing Asset properly transferred to the former RDA's housing successor. MGO is aware of this transaction based on the accounting records provided to them and initially showed their agreement in the draft reports. However, in the final report, MGO ignored the DOF's directive and chose to include this property as the Successor Agency's assets in their findings. To reflect the circumstances correctly, the value of this asset should be included in the deduction shown on Attachment C, line 13; and the asset's value should not be included in Attachment I.

Other fixed assets listed in the Due Diligence Review Attachment C, lines 11 and 12, were transferred to the City. These assets are primarily "public works" assets that were constructed for public use and benefit and currently are in such use. Pursuant to Section 34191.4 of the Health & Safety Code, these assets should be transferred to the Successor Agency for disposition in accordance with a long-range property management plan approved by the Oversight Board and the DOF. The Oversight Board and DOF have not yet approved such a plan, but as the ultimate disposition of these public works assets will likely be to the City, the City intends to preserve them and continue their public use until an approved plan exists.

Finding 10: The Due Diligence Review Attachment B identifies the amount to be remitted to the County for disbursement to the taxing entities

The Milpitas Entities object to the report finding 10 for the following reasons:

The amount identified in the Due Diligence Review Attachment B is incorrect. As indicated in our response to findings 2 and 3 above, the cash and cash-equivalent assets were transferred to MEDC before dissolution of the RDA and before enactment of AB 1484. To the extent that AB 1484 attempts to undermine the separate legal status of the MEDC, it is unconstitutional and illegal. Moreover, the right to repayment of the \$2,550,000 loan advanced from the RDA to the City's Transit Area Fund is not "cash" or a "cash equivalent," and the value of this right should be part of the deduction on Attachment B for "assets that are not cash or cash equivalents."

In addition, as shown in the attached documentation, MEDC assumed contractual liability from the former Redevelopment Agency for a total expenditure of \$21,780,000 to purchase land. MEDC has

already lawfully expended \$6,000,000 of the cash it received from the former Redevelopment Agency toward this obligation, and still owes \$12,828,464. (An additional \$2,951,536 has been paid by the City toward the purchase price of this real property.) MEDC cannot return the funds it has already spent, which are funds the former Redevelopment Agency would have spent if MEDC had assumed neither the funds nor the contract. MEDC also cannot return the funds it will need to fulfill this agreement without breaching the agreement and thus impairing the seller's contractual rights.

Finally, MEDC has also lawfully expended \$1,496,293 on goods and services, and \$4,200,000 on purchase of additional real property, and owes \$447,230 more to these third parties. MEDC cannot return the funds it has already spent, and cannot return the funds it will need to fulfill these contracts without breaching the contracts and impairing the private vendors' contractual rights.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas C. Williams', written over a horizontal line.

Thomas C. Williams
City Manager, City of Milpitas/Successor Agency
Executive Director, Milpitas Economic Development Corporation

Enclosure: as cited

Attachment 2

EDC contracts and Acquisition of Land

Date	Contractor	Description	Amount	Paid from EDC	Paid from City Fund	Remaining obligation
06/21/11	Shalleck Collaborative Inc	Consultant for audio Visual system (Project #9001)	100,000.00	(90,482.81)		9,517.19
07/20/11	Brad Farmer, CPA	Preparation of Form 1023	1,200.00	(1,200.00)		-
10/18/11	Chamber of Commerce	Business outreach and retention	60,000.00	(60,000.00)		-
01/21/12	Brad Farmer, CPA	EDC Tax returns	800.00	(800.00)		-
01/30/12	CRW Inc #17194	Police Evidence Room Improvement (Project #9003)	56,579.00	(56,579.00)		-
		City Staff Project Administration (Project #9003)	21,732.66	(21,732.66)		-
01/30/12	PCD #17553	City Hall Audio Visual Improvement (Project #9001)	1,146,650.00	(914,378.29)		232,271.71
		City Staff Project Administration & Inspection (Project #9001)	100,000.00	(56,850.68)		43,149.32
01/31/12	Preston Pipeline #10062	Wrigley Ford Dredging (Project #9002)	294,061.00	(206,965.48)		87,095.52
		City Staff Project Administration (Project #9002)	50,000.00	(26,365.54)		23,634.46
02/07/12	Fairbank, Maslin, Maullin, Metz & Assoc	Tax Measure Survey	32,500.00	(32,500.00)		-
06/26/12	Goldfarb & Lipman #17558	EDC legal services	80,000.00	(28,438.14)		51,561.86
		Subtotal	1,943,522.66	(1,496,292.60)	-	447,230.06
02/15/11	Mission West	Purchase of land - assigned from RDA on 3/7/11	21,780,000.00	(6,000,000.00)	(2,951,535.72)	12,828,464.28
03/08/12	APN #86-22-029 and 030	Land Purchase agreement 1452-1488 South Main	4,200,000.00	(4,200,000.00)		-
		Subtotal	25,980,000.00	(10,200,000.00)	(2,951,535.72)	12,828,464.28
		Total	27,923,522.66	(11,696,292.60)	(2,951,535.72)	13,275,694.34