CRA/LA, A DESIGNATED LOCAL AUTHORITY
(Successor Agency to the Community Redevelopment Agency of the City of Los Angeles, CA)

MEMORANDUM

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VARIOUS

DATE: JULY 19, 2012

TO: GOVERNING BOARD

FROM: CHRISTINE ESSEL, CHIEF EXECUTIVE OFFICER

STAFF: STEVE VALENZUELA, CHIEF FINANCIAL OFFICER
NICK SAPONARA, ACTING SPECIAL ASSISTANT TO THE CFO

SUBJECT: **DISPOSITION OF CITY CLAIMS.** Recommendations to approve and deny specified City Claims received as of July 13, 2012, authorize the reentry of City contracts and arrangements and instruct staff to add approved claims to the Third Draft Recognized Obligation Payment Schedule for the period covering January 1, 2013 to June 30, 2013 (ROPS 3).
All Regions (SDs 1, 2 and 3; CDs 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14 and 15)

RECOMMENDATIONS

That the Governing Board subject to Oversight Board approval, take the following actions:

1. Approve certain City Claims and authorize the Chief Executive Officer, or designee, to reenter into corresponding City contracts;

2. Instruct staff to add such City contracts to ROPS 3; and

3. Affirm the denial of certain City Claims.

SUMMARY

The former Community Redevelopment Agency of the City of Los Angeles, California (Prior Agency) was a party to various contracts, memoranda of understanding, sub-recipient agreements, work orders, cooperation agreements and other arrangements (City Contracts) with various departments of the City of Los Angeles (City). In accordance with Assembly Bill 1x-26 (AB1x-26), agreements between the Former Agency and the City were invalidated, and any obligations and scheduled payments associated with these agreements were excluded from the final Enforceable Obligation Payment Schedule (EOPS) adopted January 24, 2012, as well as from subsequent ROPS, unless agreements were expressly approved for reentry and inclusion on ROPS by the Governing Board and Oversight Board. However, agreements with the City relating to the expenditure of Federal funds are enforceable obligations and such contracts were not invalidated, remain in effect and are listed on the approved ROPS covering the period January 1, 2012 through June 30, 2012 (ROPS 1).

On March, 1, 2012, staff outlined a process, in accordance with Sections 34171 and 34178 of AB1x-26, for evaluating, revalidating and adding City Contracts to the ROPS. As of July 13, 2012, CRA/LA staff has received one hundred and thirteen (113) City claims for revalidation and payment (City Claims). To date, the Governing Board has taken action on one-hundred and one (101) of these City Claims, subject to Oversight Board approval. Of the remaining City Claims, CRA/LA staff recommends that certain City Claims be approved and corresponding

contracts reentered into. A table listing the outstanding City Claims received as of July 13, 2012, as well as those pending final determination of amount due, if any, is attached (Attachment A – Pending City Claims).

PREVIOUS ACTIONS

April 5, 2012 – The CRA/LA, a Designated Local Authority (CRA/LA) Governing Board, disposition of certain City Claims.

April 19, 2012 – The CRA/LA, a Designated Local Authority (CRA/LA) Governing Board, disposition of certain City Claims.

DISCUSSION & BACKGROUND

Successor Agencies are required to make payments and perform other obligations due for "enforceable obligations" as defined in AB1x-26. To implement this process, a Successor Agency is required to prepare a ROPS for each six-month period of each fiscal year. The Successor Agency is further required to submit its Draft ROPS to the Oversight Board (also established pursuant to AB1x-26) for its review and approval prior to being transmitted to the State Controller, California Department of Finance and the Los Angeles County Auditor-Controller. Thereafter, the Successor Agency may pay only those payments listed on the approved ROPS and is required to prepare a new ROPS for each six-month period for approval by the Oversight Board. The disposition of City Claims is the first step in including any City Contract on future ROPS.

City Claim Review Process

The Prior Agency received voluminous correspondence from the City indicating claims related to City Contracts, which was attached to the March 1, 2012 report on the status of City Contracts. In order to adequately track, review and process these claims, staff met with the City to discuss a process and timeline for formally submitting claims which included the completion of a Third-Party Claim form by the City. CRA/LA and City staff agreed that, notwithstanding the prior correspondence, the first step in initiating the claim review would be the submission of the Third-Party Claim forms by the City.

All City Claims received were recorded, assigned a log number and forwarded to the appropriate CRA/LA staff person who is most knowledgeable about the subject matter to review the Claim and make recommendations on the appropriate disposition based upon AB1x-26. After review by Legal Counsel, a function which was performed by the City Attorney's Office up until April 27, 2012, the Claim was forwarded to senior staff for final recommendation. Generally, there are three outcomes: (i) the Claim is approved and the Contract is recommended for reentry and/or inclusion on future ROPS for payment; (ii) the Claim is denied as an enforceable obligation did not exist or the Contract was cancelled and not recommended to be reentered into; or (iii) the Contract is recommended to be reentered into, but the Claim requires further research or discussion with the City as to the amount of the total obligation and any scheduled payments.

Attached is a memorandum prepared by the Kane, Ballmer & Berkman law firm that analyzes the legal basis for reentering into contracts between a redevelopment agency and the city that established it under AB1x-26 (Attachment B – Legal Memorandum). This memorandum formed the legal framework for CRA/LA staff's review of the City Contracts. In accordance with that

framework, and as part of its review, CRA/LA staff categorized the City Contracts into the following categories:

1. Agreements with the City that fall into the categories set forth in Section 34171 and 34178:
   a. Agreements entered into contemporaneously with a financing that secure or provide for repayment of the indebtedness (e.g., bonds, notes, certificates of participation or other evidence of indebtedness);
   b. Written agreements entered into within two years after the formation of the Former Agency (i.e., by 1950) providing start-up funds; and
   c. Joint Powers Agreements in which the Former Agency and the City are parties.

2. Agreements with the City relating to Housing Assets;

3. Agreements with the City relating to the expenditure of Federal funds such as sub-recipient agreements or other implementation of agreements with the Federal Government, in which case underlying Contracts were not invalidated and remain in effect;

4. Memoranda of Understanding/Cooperation Agreements and other agreements and obligations for redevelopment services and public works;

5. Agreements relating to assets or properties that were constructed and are used for a governmental purpose, including roads, school buildings, parks and fire stations;

6. Agreements that contain enforceable obligations to third parties other than the City (including but not limited to state grant agreements)(the third party could be a signator to the contract with the CRA/LA or the City may have contracted with the third party); and

7. Arrangements with the City for ongoing services provided to the DLA after February 1, 2012, such as legal services, information technology support, controller services, etc.

Status of Disposition of City Claims

As of July 13, 2012, the CRA/LA received one hundred and thirteen (113) City Claims, eleven (11) of which have not yet been acted upon by the Governing Board, and sixteen (16) of which are pending final determination of amount due, if any (Attachment A – Pending City Claims). A summary of the City Claims and status of disposition as recommended by the Governing Board is as follows:

Status of Claim	Number
Approved/Added to ROPS*	60
Recommended for consideration as an Equitable Approval**	2
Denied	41
Pending	11
Total	**113**

* *Includes ten (10) BID Assessment payments approved by Governing Board but later determined to not require reentry/revalidation, and were included on ROPS 1. Also includes fifteen (15) Claims relating to the expenditure of Federal funds subsequently determined to not have been invalidated by AB1x-26; approval of funds due, if any, is subject to Governing Board approval.*

** *One City Claim was partially approved and also recommended for consideration as an Equitable Approval and is therefore double counted in the summary chart.*

On May 10, 2012, in conjunction with approval of ROPS 1 and ROPS 2, the Oversight Board approved the reentry of two agreements with the City including a Cooperation Agreement with the Bureau of Contract Administration for local hire and living wage monitoring services of CRA/LA-funded development projects and a Cooperation Agreement with the Los Angeles Housing Department pertaining to use of a voluntary 5% set aside of Housing Trust Funds; payments associated with these agreements appear on the approved ROPS 1 and ROPS 2 and will be processed upon execution of the reentry agreement by the CRA/LA and the City, as stipulated by the Oversight Board. Oversight Board consideration of all other Claims approved by the Governing Board (with the exception of the BID Assessments and claims involving the expenditure of Federal funds reference above), remain pending.

CRA/LA staff intends to continue working with the City to expeditiously resolve all outstanding issues, including identifying the current obligation of City Contracts and arrangements recommended for reentry so that the required payments can be recommended for inclusion on the appropriate 6-month ROPS schedule.

ROPS AND ADMINISTRATIVE BUDGET IMPACT

Payments associated with City Contracts that are approved for reentry will be included in ROPS 3 to be approved by the Oversight Board and transmitted to DOF by September 1, 2012.

ENVIRONMENTAL REVIEW

The proposed action is not a "project" within the meaning of the California Environmental Quality Act ("CEQA"), as specifically provided in CEQA Guidelines section 15378(b)(4), and thus is not subject to CEQA pursuant to the CEQA Guidelines section 15060(c)(3).

Christine Essel
Chief Executive Officer

By:

David Riccitiello
Chief Operating Officer

There is no conflict of interest known to me which exists with regard to any CRA/LA officer or employee concerning this action.

Attachment A. Pending City Claims
Attachment B. Legal Memorandum, Revised July 11, 2012

ATTACHMENT A | PENDING CITY CLAIMS (as of 7/13/12)

LOG ID#	CRA/LA Contract/ WO #	City Contract #	Execution Date	Claimant/Payee	Claim Amount	Project Name / Description
C-1		65464	PN-2/6/2003	City of Los Angeles - Community Development Department	$ 2,542,311	CDBG Loan (maturity date: 6/30/2011); *(Agreement remains in effect - pending determination of amount due, if any)*
C-2		80935	PN-2/6/2003	City of Los Angeles - Community Development Department	$ 4,986,796	CDBG Loan (maturity date: 3/31/2012); *(Agreement remains in effect - pending determination of amount due, if any)*
C-3		82911; 84762; 92892	PN-2/6/2003	City of Los Angeles - Community Development Department	$ 2,583,956	CDBG Loan (maturity date: 6/30/2021); *(Agreement remains in effect - pending determination of amount due, if any)*
C-7				City of Los Angeles - Community Development Department	$ 9,600,000	Active Commercial & Industrial Earthquake Loan Recovery Program (CIELRP); *(Agreement remains in effect - pending determination of amount due, if any)*
C-8	502351		01/30/02	City of Los Angeles - Community Development Department	$ 6,821,250	Urban Development Action Grant (UDAG) Hollywood & Highland (maturity date: 12/01/2022); *(Agreement remains in effect - pending determination of amount due, if any)*
C-9	502617	106620	05/26/04	City of Los Angeles - Community Development Department	$ 13,542,000	Section 108 Loan Repayment - NoHo Commons; *(Agreement remains in effect - pending determination of amount due, if any)*
C-10	503299	114534	09/15/08	City of Los Angeles - Community Development Department	$ 19,153,201	Acquisition of Real Property for Marlton Sq.: (CDBG, Section 108, EDI, BEDI); *(Agreement remains in effect - pending determination of amount due, if any)*
C-11		118492	09/15/08	City of Los Angeles - Community Development Department	$ 6,442,000	Acquisition of Real Property, Avalon Park Plaza Project (Float Loan, Section 108, BEDI); *(Agreement remains in effect - pending determination of amount due, if any)*
C-12		106481	6/12/2008	City of Los Angeles - Community Development Department	$ 5,683,000	Section 108 Loan for Slauson Central Shopping Center (Pledge of AB1290); *(Agreement remains in effect - pending determination of amount due, if any)*
C-13	503066	111242	12/20/06	City of Los Angeles - Community Development Department	$ 2,564,065	CDBG Contract - Acquisition of Real Property for 812 East 59th Street (Pacific Center Place); *(Agreement remains in effect - pending determination of amount due, if any)*
C-14	501915	95677	07/29/99	City of Los Angeles - Community Development Department	$ 3,799,800	CDBG Contract - Acquisition of Real Property for Blossom Plaza/Chinatown Cultural Center; *(Agreement remains in effect - pending determination of amount due, if any)*
C-15	503202	113068	10/05/07	City of Los Angeles - Community Development Department	$ 2,000,000	CDBG Contract - Acquisition of Real Property for Westlake Theatre; *(Agreement remains in effect - pending determination of amount due, if any)*
C-16	503067	111242	01/29/07	City of Los Angeles - Community Development Department	$ 3,254,790	CDBG Contract - Acquisition of Real Property for Adams/La Brea Project; *(Agreement remains in effect - pending determination of amount due, if any)*
C-17	503158	112106	8/14/07	City of Los Angeles - Community Development Department	$ 2,218,128	CDBG Contract - Acquisition of Real Property for Crenshaw Gateways Project; *(Agreement remains in effect - pending determination of amount due, if any)*

LOG ID#	CRA/LA Contract/ WO #	City Contract #	Execution Date	Claimant/Payee	Claim Amount	Project Name / Description
C-18	Various	Various		City of Los Angeles - Community Development Department	$ 8,881,641	Various CDBG Service Payback Loans; *(Agreement remains in effect - pending determination of amount due, if any)*
C-54	503215		6/23/08; 3/23/11 - Amend	City of Los Angeles - Department of City Planning	$ 120,563	South LA New Community Plan TIMP Study *(Previously acted upon by Governing Board on April 19, 2012 - submitted for reconsideration of amount due)*
C-85	502932		10/21/06	City of Los Angeles - Housing Department	$ 6,000,000	Permanent Supportive Housing Cooperation Agreement
C-95	n/a	n/a	n/a	City of Los Angeles - Housing Department	TBD	Admin and potential legal costs to address ADA non compliance issues
C-96	n/a	n/a	4/X/99	City of Los Angeles - City Administrative Officer (via U.S. Bank)	$ 310,451	Hollywood & Highland 1999 MICLA Bond Issuance surplus funds
C-106		CF 07-0069-S2	n/a	City of Los Angeles - General Services Department	$ 800,000	Return of AB1290 Funds - 406 N. Gaffey, San Pedro
C-107		C-84835 / BA0438	05/15/92	City of Los Angeles - Housing Department	$ 1,698,745	Eastside Projects - Renewable Deferred Loan; 5/15/12 maturity. Claim for principle amount, does not include 5% simple interest due.
C-108		C-86283 / BA0437	04/26/93	City of Los Angeles - Housing Department	$ 1,383,044	Eastside Projects - Renewable Deferred Loan; 4/26/13 maturity. Claim for principle amount, does not include 5% simple interest due.
C-109	502958	FA00007 / 060024	03/24/06	City of Los Angeles - Housing Department	$ 1,500,000	Residual Receipts Loan - Site Acquisition of 1720-26 N. Gower Street, Hollywood
C-110	502875	C-109091 / FA0008	10/27/05	City of Los Angeles - Housing Department	$ 1,200,000	Residual Receipts Loan - Encore Hall Senior Housing Project
C-111	503391 / 013		8/31/09 ; 3/15/10 - WO	City of Los Angeles - General Services Department	$ 11,200	Reseda Theatre - Painting services, 18445 and 18447 Sherman Way
C-112	503243 / 001		11/26/08; 3/13/09 - WO	City of Los Angeles - Office of Community Beautification	$ 14,914	Install wrought iron gates at the alley between Normandie Ave. and Brighton Ave. and 27th St. and 29th St.
C-113	503243 / 003		11/26/08; 7/7/09 - WO	City of Los Angeles - Office of Community Beautification	$ 5,611	Fabricate and install wrought iron gates at the alley adjacent to 1905 Western Ave. between Washington Blvd. and 20th St.

ATTACHMENT B

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Date: July 11, 2012

From: Murray O. Kane
Glenn F. Wasserman

To: Governing Board
CRA/LA, a Designated Local Authority

cc: Christine Essel
Steve Valenzuela
Tom Webber

Re: AB 1X 26: Validity and enforceability of agreements between the Former Redevelopment Agency and the City of Los Angeles

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You have asked for a legal analysis of AB 1X 26 (hereinafter referred to as "AB 26"),[1] as amended by Assembly Bill No. AB 1484 (Chapter 26, filed with Secretary of State June 27, 2012, "AB 1484"), relative to the validity and enforceability of agreements between the former Community Redevelopment Agency of the City of Los Angeles (the "Former Agency") and the City of Los Angeles ("City"). We understand that the City has submitted a number of demands, claims and notices of default to the Former Agency relating to the enforcement of agreements between the Former Agency and City.

Background

The Former Agency was established under California state law by the Los Angeles City Council in 1948 to address conditions of blight throughout the City of Los Angeles. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of AB 26. Pursuant to California Health and Safety Code Section 34173, the CRA/LA, a Designated Local Authority ("DLA") was designated to be the successor agency of the Former Agency.

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[1] Stats. 2011, 1st Ex. Sess. 2011-2012. Unless otherwise indicated, all section references in this memo shall refer to the applicable section of the California Health and Safety Code as amended by AB 26.

Over the years, the Former Agency and the City of Los Angeles entered into numerous agreements regarding the implementation of redevelopment activities. These agreements were authorized by various provisions of the California Community Redevelopment Law, Health and Safety Code Section 33000 et seq., including but not limited to the following:

> Section 33205 ("An agency is authorized to delegate to a community any of the powers or functions of the agency with respect to the planning or undertaking of a redevelopment project in the area in which such community is authorized to act, and such community is hereby authorized to carry out or perform such powers or functions for the agency");
>
> Section 33220 ("For the purpose of aiding and co-operating in the planning, undertaking, construction, or operation of redevelopment projects located within the area in which it is authorized to act, any public body, upon the terms and with or without consideration as it determines, may…(e) [E]nter into agreements with the … agency … respecting action to be taken pursuant to any of the powers granted by this part or any other law…"); and
>
> Section 33445 ("… an agency may, with the consent of the legislative body, pay all or a part of the value of the land for and the cost of the installation and construction of any building, facility, structure or other improvement that is publicly owned and is located inside or contiguous to the project area… (c) (1) Where the value of the land or the cost of the installation and construction of the building, facility or other improvement that is publicly owned, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure or other improvement that is publicly owned, or both, by periodic payments over a period of years.")

We understand that there may be many of these agreements that remain to be fully paid or performed by the DLA. Pursuant to Section 34177, the DLA, as successor agency, is required to prepare a draft Recognized Obligation Payment Schedule ("ROPS") setting forth the enforceable obligations of the Former Agency and submit the ROPS to the oversight board for approval. While the general intent of AB 26 is to provide for the dissolution of redevelopment agencies and the winding down of their activities, the DLA, as successor agency, is required to continue to make payments due for enforceable obligations, and "only those payments required pursuant listed in the Recognized Obligation Payment Schedule may be made by the successor agency…".[2] However, Section 34171(d)(2) defines the term "enforceable obligation" so as to *exclude* generally the agreements between a former redevelopment agency and the city, county or city and

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[2] The Legislative Counsel's Digest accompanying AB 1484 states: "Existing law requires successor agencies to wind down the affairs of the dissolved redevelopment agencies and to, among other things, make payments due for enforceable obligations, as defined, …" See, also, Section 34177.3.

county that established it (the "Sponsoring Entity")[3], subject to certain narrow exceptions enumerated in the statute.[4]

Nevertheless, provisions of AB 26 (as amended by AB 1484) elsewhere suggest that there are various categories of City-Agency Agreements that may not fit precisely into the enumerated categories set forth in the definition of "enforceable obligation" in Section 34171 but are in any event authorized by and/or consistent with AB 26 and therefore may be considered for inclusion in the ROPS to enable the successor agency to carry out its remaining obligations pursuant to such agreements. In each case, there appears to be support in the very language of AB 26 and/or AB 1484 for proposing that these agreements ought to be honored and payments made by the DLA. In any event, the final approval of any such matter is vested in the oversight board, subject to review by the Department of Finance.[5] That is, seeking the approval of the oversight board of such agreements is authorized by Section 34178(a), which provides, in pertinent part, as follows:

> "Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency; provided, however, that a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining approval of its oversight board...." [Emphasis added].

This is implemented by Section 34180(h), which provides: "All of the following successor agency actions shall first be approved by the oversight board: ... (h) A request by the successor agency to enter into an agreement with the city, county, or city and county that formed the redevelopment agency that it is succeeding". Significantly, this provision was amended by AB 1484 to establish a distinction between loan agreements between a former redevelopment agency and its Sponsoring Entity, and other agreements, which may include many of City-Agency Agreements. AB 1484 added the following to Section 34180(h):

> "An oversight board shall not have the authority to reestablish loan agreements between the successor agency and the city, county, or city and county that formed the redevelopment agency except as provided in Chapter 9 (commencing with Section 34191.1). Any actions to reestablish any other agreements that are in furtherance of enforceable obligations, with the city, county, or city and county that formed the redevelopment agency are invalid until they are included in an

[3] For purposes of this memorandum, contracts and agreements between a former redevelopment agency and its Sponsoring Entity are sometimes referred to as "City-Agency Agreements".
[4] Neither the City nor DLA has a constitutional right to be free from state impairment of contractual obligations, in the same sense as a private corporation or individual. See City of Safety Harbor v. Birchfield, 529 F.2d 1251, 1254 (5th Cir. 1976).
[5] Under Section 34179(h), any action taken by an oversight board is subject to review and approval of the Department of Finance.

approved and valid Recognized Obligation Payment Schedule." [Emphasis added].

The purpose of this memorandum, then, is to propose certain categories of City-Agency Agreements with respect to which we believe there is a justification and legal basis in AB 26 for inclusion in a ROPS. Please note, however, that to qualify as an "enforceable obligation", any specific proposed obligation must still contain all the elements of a valid and binding contract or agreement. This memorandum does not address that issue, but merely recommends that agreements between the Former Agency and the City of Los Angeles that fall within the following categories may be considered for inclusion in the ROPS, for the reasons stated below:

1. Agreements with the City that fall into the categories set forth in Section 34171 and 34178:

   A. Agreements entered into contemporaneously with a financing that secure or provide for repayment of the indebtedness (e.g., bonds, notes, certificates of participation or other evidence of indebtedness);

   B. Written agreements entered into within two years after the formation of the Former Agency (i.e., 1950) providing start-up funds; and

   C. Joint Powers Agreements in which the Former Agency and the City are parties.

2. Agreements with the City relating to Housing Assets;

3. Agreements with the City relating to the expenditure of Federal funds such as subrecipient agreements or other implementation of agreements with the Federal Government;

4. Memoranda of Understanding/Cooperation Agreements and other agreements and obligations for redevelopment services and public works;

5. Agreements relating to assets or properties that were constructed and are used for a governmental purpose;

6. Agreements that contain enforceable obligations to third parties other than the City (including but not limited to state grant agreements);

7. Arrangements with the City for ongoing services provided to the DLA after February 1, 2012, such as legal services, information technology support, controller services, etc.;

8. Loan Agreements relating to City loans for administrative costs, enforceable obligations or project-related expenses; and

9. Agreements relating to the transfer of land use authority; and

10. Post-Compliance: Agreements and expenditures allowed after receipt of a "finding of completion" by the Department of Finance.

Because AB 26 makes a distinction between those asset transfers, financing arrangements and other activities of former redevelopment agencies and their Sponsoring Entities that occurred on or after January 1, 2011 and those that occurred on or before December 31, 2010, agreements dated before January 1, 2011 are presumed to be valid while those dated on or after that date should be reviewed on a case-by-case basis to determine the purpose of the agreement and whether there is support for its consideration as an "enforceable obligation". For example, as discussed below in connection with housing agreements, we believe there may be exceptions to this general approach for sub-agreements that were entered into on or after January 1, 2011 where the purpose of the sub-agreement is to implement an otherwise eligible City-Agency Agreement that was executed prior to January 1, 2011. Another example is that we do not believe the January 1, 2011 cut-off date should apply to agreements or other arrangements providing for services to the DLA after February 1, 2012 (since the DLA did not even exist before that date).

It should be noted that it is possible that upon analysis of the facts surrounding the agreements claimed by the City to be enforceable, it may be determined that no City-Agency Agreements fall within a particular category. At the same time, we recognize that the City may raise claims relating to obligations, agreements and contracts that do not fit into any of these categories. In all such cases, the agreement would have to be evaluated on its merits to determine if there is a basis in law for its inclusion in the ROPS, notwithstanding the general exclusion of City-Agency Agreements from the definition of "enforceable obligation". At the same time, it should be noted that just because an agreement falls within one of the following categories, it may not be eligible for inclusion in the ROPS unless it is a legally binding and enforceable agreement or contract.[6]

The following analysis addresses each of the suggested categories separately. Of course, to the extent that any given agreement falls within two or more of the following categories (for example, an agreement that concerns the use of federal grant money for affordable housing), the statutory basis for its inclusion in the ROPS is even more defensible.

1. <u>Agreements with the City that fall within the categories set forth in Sections 34171 and 34178: Exceptions to the exclusion from definition of "enforceable obligation"</u>

[6] We have not been requested to conduct such a contract-by-contract analysis and this memorandum does not purport to analyze the eligibility of any particular agreement. In each case, the specific facts of the transaction and terms of the contract will need to be reviewed in order to determine whether there is a basis in law for the inclusion of such contract in the ROPS.

The first category describes contracts or agreements between the Former Agency and the City that are specifically authorized by Sections 34171 and 34178, which are the sections of AB 26 that address generally the status of City-Agency Agreements. In summary, these include the following: (A) Agreements entered into contemporaneously with a financing that secure or provide for repayment of the indebtedness; (B) Written agreements entered into within two years after the formation of the Former Agency providing start-up funds; and (C) Joint Powers Agreements in which the Former Agency and the City are parties.

Section 34171(d)(1) contains the definition of the term "enforceable obligation." Generally, this section authorizes successor agencies to continue to make payments for which the former redevelopment agency was legally obligated. Section 34171(d)(2), however, *excludes* from the definition "any agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency." This general prohibition, however, is modified by the following exceptions:

> "However, written agreements entered into (A) at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations[7], and (B) solely for the purpose of securing or repaying those indebtedness obligations may be deemed enforceable obligations for purposes of this part. Notwithstanding this paragraph, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations."

This provision would provide the basis for the DLA to include in the ROPS all agreements between the Former Agency and the City that were entered into at the time that the Former Agency issued certain indebtedness obligations, including but not limited to, certificates of participation or lease revenue bonds, for the purpose of securing those obligations.

Section 34178(a) in some ways repeats Section 34171(d). It provides, pertinent part, as follows:

> "Commencing on the operative date of this part, agreements, contracts, or arrangements between the city or county, or city and county that created the redevelopment agency and the redevelopment agency are invalid and shall not be binding on the successor agency..."

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[7] For purposes of the exception in Section 34171(d)(2), the term "indebtedness obligation" is defined to mean "bonds, notes, certificates of participation, or other evidence of indebtedness issued or delivered by the redevelopment agency or by a joint exercise of powers authority created by the redevelopment agency, to third-party investors or bondholders to finance or refinance redevelopment projects undertaken by the redevelopment agency in compliance with the Community Redevelopment Law (Part 1 (commencing with Section 33000)).

However, Section 34178(b) provides for two of the same exceptions to this general exclusion as those set forth in Section 34171(d)(2), and one additional exception:

> "Notwithstanding subdivision (a), any of the following agreements are <u>not invalid</u> and may bind the successor agency:
>
> (1) A duly authorized written agreement entered into at the time of issuance, but in no event later than December 31, 2010, of indebtedness obligations, and solely for the purpose of securing or repaying those indebtedness obligations.
>
> (2) A written agreement between a redevelopment agency and the city, county, or city and county that created it that provided loans or other startup funds for the redevelopment agency that were entered into within two years of the formation of the redevelopment agency.
>
> (3) A joint exercise of powers agreement in which the redevelopment agency is a member of the joint powers authority. However, upon assignment to the successor agency by operation of the act adding this part, the successor agency's rights, duties, and performance obligations under that joint exercise of powers agreement shall be limited by the constraints imposed on successor agencies by the act adding this part." [Emphasis added].

Therefore, in light of the foregoing, we would suggest that any of the following categories of agreements between the City and the Former Agency should be considered for inclusion in the ROPS:

A. Agreements meeting the requirements of Section 34171(d)(2) and 34178(b)(1). That is, agreements entered into contemporaneously with a financing that secure or provide for repayment of the indebtedness (e.g., bonds, notes, certificates of participation or other evidence of indebtedness).

B. Agreements meeting the requirements of Section 34171(d)(2) and Section 34178(b)(2). That is, written agreements that provided loans or other startup funds for the Former Agency that were entered into within two years after the formation of the Former Agency (i.e., 1950).

C. Agreements meeting the requirements of Section 34178(b)(3). That is, certain joint powers agreements to which the Former Agency and the City are parties, but subject to "the constraints imposed on successor agencies by the act adding this part".

2. <u>Agreements with the City relating to housing assets</u>.

The second category would be contracts or agreements between the Former Agency and the City that relate to the development or operation of housing. There are a number of provisions of AB 26 and AB 1484 that address the housing obligations of former

redevelopment agencies. As already noted, Section 34171(d)(2) generally excludes City-Agency Agreements from the definition of "enforceable obligation." Section 34171(d)(3) goes on to provide that contracts or agreements between the former redevelopment agency and other public agencies (which would, presumably, include the Sponsoring Entity) "to perform services or provide funding for governmental or private services or capital projects outside of redevelopment project areas that do not provide benefit to the redevelopment project and thus were not properly authorized under Part 1 (commencing with Section 33000) shall be deemed void on the effective date of this part; provided, however that such contracts or agreements for the provision of housing properly authorized under Part 1 (commencing with Section 33000) shall not be deemed void." [Emphasis added]. This proviso creating an exception to the general provisions in AB 26 invalidating City-Agency Agreements is evidence of a legislative intent to treat housing differently than other types of activities of former redevelopment agencies.

This special treatment is also evidenced by Section 34176(a), which provides that the Sponsoring Entity may elect to retain the housing assets and functions previously performed by the redevelopment agency[8], and if the Sponsoring Entity elects to retain the authority to perform housing functions previously performed by a redevelopment agency (which the City of Los Angeles did elect to do), all rights, powers, duties, obligations, and housing assets, as defined in Section 34176 (e), excluding any amounts on deposit in the Low and Moderate Income Housing Fund, shall be transferred to the Sponsoring Entity. This transfer of the housing function is implemented by Section 34177(g), which provides that the successor agency shall "[E]ffectuate transfer of housing functions and assets to the appropriate entity designated pursuant to Section 34176", and Section 34181(c), which provides that the oversight board shall direct the successor agency to "[T]ransfer housing assets pursuant to Section 34176".

In addition, Section 34171(d)(1)(G) includes in the definition of "enforceable obligation" the following: "[A]mounts borrowed from or payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date of the act adding this part; provided, however, that the repayment schedule is approved by the oversight board. Repayments shall be transferred to the Low and Moderate Income Housing Asset Fund established pursuant to subdivision (d) of Section 34176 as a housing asset and shall be used in a manner consistent with the affordable housing requirements of the Community Redevelopment Law (Part 1 (commencing with Section 33000))."

In light of the foregoing provisions, we recommend that any agreement between the Former Agency and the City relating to the housing assets and functions of the Former Agency that was "properly authorized" under Part 1 (commencing with Section 33000), (which might include, but not be limited to, findings of benefit required by Section

[8] Although not pertinent here, Section 34176(b) provides that if the Sponsoring Entity does not elect to retain the responsibility for performing the housing functions of the former redevelopment agency, all rights, powers, assets, liabilities, duties and obligations associated with the housing activities of the former redevelopment agency shall be transferred to a local housing authority or to the California Department of Housing and Community Development.

33334.2(g), where applicable), and, if applicable, any such agreement that might relate to amounts borrowed from the Low and Moderate Income Housing Fund, the repayment of which had been deferred, may be considered for inclusion in the ROPS. We would further recommend that in appropriate instances, sub-agreements that fall within this category that were entered into on or after January 1, 2011 may be considered for inclusion in the ROPS since they relate directly to and are merely implementing a pre-2011 agreement. Including in the ROPS agreements that relate to the housing assets and functions of the Former Agency is especially fitting, since the City has elected, pursuant to Section 34176(a), to perform the housing functions of the Former Agency and such agreements would be in support of those functions.

3. <u>Agreements with the City relating to the expenditure of Federal funds, such as subrecipient agreements, or other implementation of agreements with the Federal Government</u>.

A third category of agreement between the Former Agency and the City to consider including in the ROPS would be any agreement relating to the implementation of federal grants or other Federal programs. While performance of City-Agency Agreements relating to federal grants is not specifically included in the exceptions to the exclusion of City-Agency Agreements generally from the definition of "enforceable obligation," that definition, in Section 34171(d)(1)(C), does include: "[P]ayments required by the federal government...." Over the years, the City has been the recipient of grants under various federal grant programs, such as the Urban Renewal program, Community Development Block Grant program, Urban Development Action Grant program, HOME program and others, where federal grants for projects within redevelopment project areas were administered by the Former Agency pursuant to loan or grant agreements between the City and the Former Agency[9]. In some cases, the Former Agency would further administer the loan or grant by entering into a DDA, OPA or loan agreement with a developer for development of the subject project. In other instances, the City obtained a loan under HUD's Section 108 program, and the Former Agency agreed to pay debt service on the Section 108 loan using tax increment funds. There may also be loan or grant agreements between the City and the Former Agency involving federal grants that require repayment by the Former Agency to the City, which repayment would constitute "program income" governed by the federal grant program.

While Section 34171(d)(1)(C) recognizes the need of the successor agency to be able to make "payments required by the federal government," the exclusion of City-Agency Agreements from the definition of "enforceable obligation" could interfere with the ability of the successor agency to do so. Moreover, a state law may not be implemented so that it conflicts with federal requirements without violating the Supremacy Clause of the U.S. Constitution.[10] To the extent the implementation of AB 26 purports to invalidate an obligation of the Former Agency to the Federal Government, whether directly or

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[9] Section 33601 provides that "An agency may borrow money or accept financial or other assistance from the state or the federal government or any other public agency for any redevelopment project within its area of operation, and may comply with any conditions of such loan or grant".

[10] U.S. Const., Art. VI, cl. 2. See: <u>Service Engineering Company</u> v. <u>Emery</u>, 100 F. 3d 659 (9th Cir. 1996).

indirectly through a City-Agency Agreement required by a grant agreement between the City and the Federal Government, it would conflict with federal law and therefore be invalid as a violation of the Supremacy Clause.

In light of the inclusion of payments required by the federal government in Section 34171(d)(1)(C) and supremacy of federal requirements over potentially conflicting state requirements, we therefore recommend, that any executory agreements between the Former Agency and the City that were entered into in connection with a federal grant program should be considered for inclusion in the ROPS.

4. Memoranda of Understanding/Cooperation Agreements and other agreements and obligations for redevelopment services and public works.

Another category of agreement between the Former Agency and the City to consider including in the ROPS would be memoranda of understanding, cooperation agreements and other contracts that require the completion of contracted work relating to the development of property. While completion of development projects under a City-Agency Agreement is not specifically included in the exceptions to the exclusion of City-Agency Agreements from the definition of "enforceable obligation," Section 34177(i) requires a successor agency to "[C]ontinue 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." The Former Agency and the City have entered into numerous agreements under Section 33445 and other sections of the CRL for the design and construction of publicly owned streetscapes, parks, open spaces, parking facilities, buildings and other public improvements in redevelopment project areas that were to be funded and/or constructed by the Former Agency and/or constructed, used or operated by the City.

To the extent any agreements that fall within this category remain to be completed, the failure to include such an agreement in the ROPS would defeat the purpose of Section 34177(i). Therefore, we recommend that any executory agreements for services and public works between the Former Agency and the City that relate to such development projects should be considered for inclusion in the ROPS.

5. Agreements relating to assets or properties that were constructed and are used for a governmental purpose.

Another category of agreement between the City and the Former Agency that should be considered for inclusion in the ROPS consists of agreements providing for the construction and/or use of assets or properties for a governmental purpose. While performance of City-Agency Agreements relating to assets or properties that were constructed and are used for a governmental purpose is not specifically included in the exceptions to the exclusion of City-Agency Agreements from the definition of "enforceable obligation," the basis for including these agreements in the ROPS is that Section 34181(a), which is the provision of AB 26 that authorizes the oversight board to direct the successor agency to dispose of the assets and properties of the former

redevelopment agency, provides for a possible alternative for properties in this category. Section 34181(a) provides: "...provided, however, that the oversight board may instead direct the successor agency to transfer ownership of those assets that were constructed and used for a governmental purpose, such as roads, school buildings, parks, police and fire stations, libraries, and local administrative buildings, to the appropriate public jurisdiction pursuant to any existing agreements relating to the construction and use of that asset. Disposal shall be done expeditiously and in a manner aimed at maximizing value. Asset disposition may be accomplished by a distribution of income to taxing entities proportionate to their property tax share from one or more properties that may be transferred to a public or private agency for management pursuant to the direction of the oversight board" [Emphasis added].[11]

There may be agreements between the City and the Former Agency that provided for the construction and use of property for governmental purposes. These purposes might include parks and open space, public parking lots and garages and similar public uses. Section 34181(a) provides that the oversight board may direct the successor agency to transfer ownership of such assets to the "appropriate jurisdiction" pursuant to any existing agreements relating to the construction or use of such an asset. These might include the City, a transit agency, the county or other public agency that has responsibility for maintenance and operation of the property or asset. To the extent that the City is the "appropriate jurisdiction" including such agreement in the ROPS would be consistent with this provision.

6. Other agreements that contain enforceable obligations to third parties other than the City (including but not limited to state grant agreements).

Another category of City-Agency Agreement that the DLA may consider for inclusion in the ROPS consists of other agreements entered into by the Former Agency and the City of Los Angeles which contain enforceable obligations to third parties other than the City. One example of a City-Agency Agreement in this category might be a State grant agreement with the Former Agency or an agreement between the City and Former Agency to carry out the terms of a State Grant, especially where the grant funds were to be used by the Former Agency to pay the City for services or public works or otherwise fit into another category described in this memo.

While performance of City-Agency Agreements relating to State grant agreements or other obligations to the State of California is not specifically included in the exceptions to the exclusion of City-Agency Agreements from the definition of "enforceable obligation," the basis for including these agreements in the ROPS is that Section 34171(d)(1)(C) includes as part of the definition of "enforceable obligation" the following: "Payments required by the federal government, preexisting obligations to the state or obligations imposed by state law, other than passthrough payments that are made by the county auditor-controller pursuant to Section 34183....". In addition, Section

[11] AB 1484 added Section 34191.3, which suspends the requirements of this provision and Section 34177(e), "except as those provisions apply to the transfers for governmental use", until a long-range property management plan is approved by the Department of Finance pursuant to Section 34191.5(b).

34180(e) provides that the following successor agency actions shall first be approved by the oversight board: "...(e) Continuing the acceptance of federal or state grants, or other forms of financial assistance from either public or private sources, if that assistance is conditioned upon the provision of matching funds, by the successor entity as successor to the former redevelopment agency, in an amount greater than 5 percent." These provisions provide authority to include City-Agency Agreements relating to State grants in the ROPS.

Another example might include City-Agency Agreements that incorporate obligations to third parties other than the City. Third party beneficiaries of agreements between the City and the former redevelopment agency have a right to enforce the agreement, even if they were not a signatory to the agreement. Section 34171(d)(1) includes in the definition of "enforceable obligation" the following: "(E) Any legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy...." To the extent that a City-Agency Agreement includes binding and enforceable obligations to third parties other than the City, such obligations may be included in the ROPS. This category of City-Agency Agreements may include agreements between the City and the Former Agency for services or public works that relate to obligations to third parties that are committed by the terms of a disposition and development agreement, owner participation agreement, option agreement or similar document, where an independent third party has a contractual right to performance of the agreement. To the extent that there is an executory agreement between the City and the Former Agency relating to such obligations, failure to include that agreement in the ROPS could result in the inability to honor an independent third party agreement.

A further consideration would be whether the agreement addresses assets or properties of the Former Agency that are contractually committed to third parties. Another statutory basis for including these agreements in the ROPS in that Section 34167.5, which be the provision of AB 26 relating to the return to the successor agency of assets and properties of a former redevelopment agency that were transferred to the Sponsoring Entity after January 1, 2011, specifically exempts from that process any such properties and assets that are contractually committed to a third party. Section 34167.5 provides:

> "Commencing on the effective date of the act adding this part, the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency. If such an asset transfer did occur during that period <u>and the government agency that received the assets is not contractually committed to a third party for the expenditure or encumbrance of those assets</u>, to the extent not prohibited by state and federal law, the Controller shall order the available assets to be returned to the redevelopment agency or, on or after October 1, 2011 [presumably now February 1, 2012], to the successor agency, if a successor agency is established pursuant to Part 1.85 (commencing with Section 34170)." [Emphasis added].

This sub-category may include agreements between the City and the Former Agency for services or public works that relate to property or assets that are committed by the terms of a disposition and development agreement, owner participation agreement, option agreement or similar document, where an independent third party has a contractual right to the property or assets and would carry out the recognition in AB 26 that the assets and properties of a former Redevelopment Agency that are contractually committed to a third party should continue to be used for the purposes for which they have been committed to that third party. To the extent that there is an executory agreement between the City and the Former Agency relating to such assets or properties, failure to include that agreement in the ROPS could result in the inability to honor an independent third party agreement and would thus be contrary to the exception contained in Section 34167.5. Therefore, we recommend that any executory agreements between the Former Agency and the City that relate to such assets and properties may also be considered for inclusion in the ROPS.

These are examples of other types of agreements that contain enforceable obligations to third parties for which consideration should be given for inclusion in the ROPS.

7. Arrangements with the City for ongoing services provided to the DLA after February 1, 2012, such as legal services, information technology services, controller services, etc.

A final category that the DLA may consider for inclusion in the ROPS consists of agreements or other arrangements for the City to provide to the DLA, as successor agency, technical and professional services after February 1, 2012, such as legal services, information technology services, controller services and similar services that are necessary for the continued operation of the DLA pursuant to AB 26. We believe that even though agreements and other arrangements for the provision of services are not specifically exempted from the general exclusion of City-Agency Agreements from the definition of "enforceable obligations," including such arrangements in the ROPS would be consistent with Section 34171(d)(1)(F), which, as amended by AB 1484, includes as an "enforceable obligation" the following: "(F) Contracts or agreements necessary for the administration or operation of the successor agency, in accordance with this part, including, but not limited to, agreements concerning litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition, and agreements to purchase or rent office space, equipment and supplies, and pay related expenses pursuant to Section 33127 and for carrying insurance pursuant to Section 33134." [Emphasis added].

Therefore, we believe that the DLA may consider including in the ROPS agreements or other arrangements with the City providing for services necessary for the continuing operation of the successor agency after February 1, 2012.

8. Loan Agreements relating to City loans for administrative costs, enforceable obligations or project-related expenses

Another category of City-Agency Agreement that may be considered for inclusion in the ROPS is one added by AB 1484 and set forth in Section 34173(h). That subdivision provides express authority to include certain City-Agency Agreements in a ROPS, as follows:

> "The city, county or city and county that authorized the creation of a redevelopment agency may loan or grant funds a successor agency for administrative costs, enforceable obligations, or project-related expenses at the city's discretion, but the receipt and use of these funds shall be reflected on the Recognized Obligation Payment Schedule or the administrative budget and therefore are subject to the oversight and approval of the oversight board. An enforceable obligation shall be deemed to be created for the repayment of these loans."

While City-Agency Agreements relating to loans by the City to the successor agencyare not specifically included in the exceptions to the exclusion of City-Agency Agreements from the definition of "enforceable obligation," there is express authority in the foregoing provision for including these agreements in the ROPS.

9. <u>Agreements relating to the transfer of land use authority</u>

Another category of City-Agency Agreement that may be considered for inclusion in the ROPS added by AB 1484 would be an agreement relating to the transfer of land use authority and functions of the former redevelopment agency to the City authorized by Section 34173(i). This subdivision provides, in part: "At the request of the city, county, or city and county, notwithstanding Section 33205, all land use related plans and functions of the former redevelopment agency are hereby transferred to the city, county, city and county that authorized the creation of the redevelopment agency…." An agreement implementing such transfer may be an appropriate means of implementing Section 34173(i). Including expenses deemed necessary for the implementation of this transfer provision may be an appropriate expense to be included in the ROPS.

10. <u>Post-Compliance: Agreements and expenditures allowed after receipt of a "finding of completion" by the Department of Finance</u>

Chapter 9 of AB 1484 (commencing with Section 34191.1), among other things, authorizes a successor agency to take certain actions, including carrying out agreements with its Sponsoring Entity, upon the issuance of a "finding of completion" by the Department of Finance pursuant to Section 34179.7.[12] If and when the DLA receives a "finding of completion" by the Department of Finance, there will be additional categories

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[12] Section 34179.7 requires the Department of Finance to issue a "finding of completion" of the requirements of Section 34179.6 upon full payment of the amounts determined in Section 34179.6(d) or (e), as reported by the county auditor-controller pursuant to the "due diligence review" required by Section 34179.6(g), and of any amounts due pursuant to the "2011-12 catch up process" as determined by Section 34183.5.

of City-Agency Agreements that may be included in a ROPS, including, but not limited to, the following:

a. Agreements relating to the transfer of property to the City pursuant to Section 34191.5(b)[13];

b. Loan agreements entered into between the former redevelopment agency and the City, if the oversight board makes a finding that the loan was for a legitimate redevelopment purpose, pursuant to Section 34191.4(b)(1)[14]; and

c. Agreements relating to the use of bond proceeds from bonds issued on or before December 31, 2010, pursuant to Section 34191.4(c).

The DLA should consider whether and when to include any such agreements in a ROPS, in anticipation of issuance of the "certificate of compliance" pursuant to Section 34179.7.

Conclusion

For the reasons set forth in this memorandum, we recommend that there are a number of categories of City-Agency Agreements that may be considered by the DLA for inclusion in its ROPS.

Respectfully submitted,
KANE, BALLMER & BERKMAN
By: Murray O. Kane
By: Glenn F. Wasserman

[13] Section 34191.5(c)(2)(5) provides that "Property shall not be transferred to a successor agency, city, county, or city and county unless the long-range property management plan has been approved by the oversight board and the Department of Finance".
[14] Section 34191.4(b)(1) provides that "Notwithstanding subdivision (d) of Section 34171, upon application by the successor agency and approval by the oversight board, loan agreements entered into between the redevelopment agency and the city, county, or city and county that created by [sic] the redevelopment agency shall be deemed to be enforceable obligations provided that the oversight board makes a finding that the loan was for legitimate redevelopment purposes." [Emphasis added].