

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

AGREED UPON PROCEDURES REPORT
OF

CITY OF EVANSVILLE
FORD CENTER CONSTRUCTION PROJECT
VANDERBURGH COUNTY, INDIANA

January 1, 2009 to December 31, 2012



FILED
06/06/2013

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Controller	Jenny Collins Russell Lloyd Jr.	01-01-09 to 12-31-11 01-01-12 to 12-31-13
Mayor	Jonathan Weinzapfel Lloyd Winnecke	01-01-08 to 12-31-11 01-01-12 to 12-31-15
President of the Common Council	B. J. Watts Constance Robinson	01-01-09 to 12-31-11 01-01-12 to 12-31-13
President of the Redevelopment Commission	Bob Goldman Ed Hafer	01-01-09 to 12-31-11 01-01-12 to 12-31-13
President of the Redevelopment Authority	Derrick Stewart Ted Ubelhor Kenneth Haynie III	01-01-09 to 12-31-09 01-01-10 to 12-31-12 01-01-13 to 12-31-13



INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

TO: MAYOR OF THE CITY OF EVANSVILLE, CITY CONTROLLER OF THE CITY OF EVANSVILLE, PRESIDENT OF THE COMMON COUNCIL OF EVANSVILLE, PRESIDENT OF THE REDEVELOPMENT COMMISSION OF EVANSVILLE AND THE PRESIDENT OF THE EVANSVILLE REDEVELOPMENT AUTHORITY BOARD

PERIOD: January 1, 2009 to December 31, 2012

RE: EVANSVILLE FORD CENTER CONSTRUCTION PROJECT

We have performed the procedures enumerated below, which were agreed to by Mayor and City Controller of the City of Evansville, President of the Common Council of Evansville, President of the Redevelopment Commission of Evansville, and the President of the Evansville Redevelopment Authority Board, solely to assist you in evaluating the compliance with certain requirements of the Evansville Ford Center Construction Project for the period ended December 31, 2012. The management of the City of Evansville and/or the Evansville Redevelopment Authority Board is responsible for the records and compliance with these requirements. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

1. *Verify that the par amount of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B plus (minus) premiums or (discounts) was properly deposited into the construction trust accounts.*

We traced bond proceed amounts plus (minus) premiums or discounts as identified in the bond documents to the 2010A and 2010B construction trust account statements.

Results:

Results of the procedure performed indicate that the par amounts plus (minus) premiums or (discounts) of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and the 2010B were properly deposited into the correct trust account in agreement with the bond documents.

Proceeds of \$5,791,375 (\$5,790,000 par value plus \$53,485 premium and less (\$52,110) discount) were deposited into the 2010A construction trust account (\$5,409,417) and the debt service reserve trust account (\$381,958). Proceeds of \$115,570,420 (\$116,620,000 par value less (\$1,049,580) discount) were deposited into the 2010B construction trust account (\$107,877,169) and the debt service reserve trust account (\$7,693,251).

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
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2. *Verify that a debt service reserve fund of \$8,075,209 was established from the proceeds of the Evansville Redevelopment Authority Lease Rental Revenue Bonds 2010A and 2010B.*

We traced bond proceed amounts as identified in the bond documents to the debt service reserve trust account statement.

Results:

Results of the procedure performed indicate that the debt service fund was established from bond proceeds. A deposit of \$381,958 was made from the proceeds of the 2010A issue and a deposit of \$7,693,251 was made from the proceeds of the 2010B issue. These two deposits totaled \$8,075,209 which was the amount required in the bond documents.

3. *Verify that capitalized interest funds were established out of the proceeds of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B in the approximate amount of \$17,440,598.*

We traced bond proceed amounts as identified in the bond documents to the capitalized interest trust account statements verifying proper deposit of capitalized Interest funded by bond proceeds. We reviewed the bond documents to determine the source of additional funding after the initial deposit to equal the amount specified in the bond documents as capitalized interest (\$17,440,598). We reviewed additional deposits to the capitalized interest trust account to determine compliance with the bond documents.

Results:

Based on procedures performed, the initial deposits to capitalized interest trust accounts were correct but subsequent deposits to the 2010B capitalized interest trust account were incorrect.

An initial deposit of \$350,237 was made to the 2010A capitalized interest trust account in agreement with the direction to the trustee dated May 20, 2010. This deposit included interest due from August 1, 2010 until August 1, 2012, on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A.

An initial deposit of \$9,312,194 was made to the 2010B capitalized interest trust account in agreement with the direction to trustee dated May 20, 2010. This deposit included interest due August 1, 2010, February 1, 2011, and August 1, 2011, on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010B.

On the date of substantial completion (September 30, 2011) the Redevelopment Authority was to transfer from the 2010B construction trust account accrued interest less Build America Rebates which had accumulated in the capitalized interest account. Since the accrued interest was less than the accumulated rebates a transfer was not required.

The bond prospectus states: "However, pursuant to the terms of the Indenture, any such interest accruing after completion of the Project will be paid only from (i) the proceeds of the series 2010A bonds or (ii) Build America Subsidy payments required to be deposited into the Indenture."

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

On December 22, 2011, the City of Evansville transferred \$1,168,995 to the 2010B capitalized interest trust account and an additional \$2,527,904 was transferred on July 31, 2012. The above transfers were not in agreement with the bond prospectus. A lease payment was not due from the City of Evansville until January of 2013.

Also, on June 21, 2011, \$627,242 was transferred into the 2010B sinking fund trust account. The same amount was transferred out of the 2010B capitalized interest trust account on October 1, 2012. The \$627,242 had been deposited in error, by the trustee, to the 2010B sinking fund trust account and did not belong to the Evansville Redevelopment Authority.

4. *Verify that all interest payments on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B during construction were made from the capitalized interest trust accounts. Also, verify that the amount paid was derived from the amount funded by bond proceeds verses transfers in from other City funds.*

We reviewed interest payments made by the Redevelopment Authority during construction and verified that payments were made from the 2010A or 2010B sinking fund trust accounts. We reviewed the bond documents to determine the source of additional funding after the initial deposit to equal the amount specified in the bond documents as capitalized interest (\$17,440,598). We reviewed additional deposits to the capitalized interest trust account to determine compliance with the bond documents.

Results:

Based on procedures performed, interest payments on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A were made from the 2010A sinking fund trust account funded by a transfer from the 2010A capitalized interest trust account.

Based on procedures performed, interest payments on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010B were made from the 2010B sinking fund but the payments were not funded exclusively from bond proceeds transferred from the capitalized interest trust account. Included in the amount used to pay capitalized interest was \$5,981,626 of Build America Bond rebates. Also, deposited to the 2010B capitalized interest trust account and used to pay capitalized interest was a check from the City of Evansville for \$1,168,995 received on December 22, 2011. The check was issued from the City of Evansville food and beverage tax fund. On June 21, 2011, the trustee deposited \$627,242 to the 2010B sinking fund trust account.

The bond prospectus states: "However, pursuant to the terms of the Indenture, any such interest accruing after completion of the Project will be paid only from (i) the proceeds of the series 2010A bonds or (ii) Build America Subsidy payments required to be deposited into the Indenture."

Based on the bond prospectus, the Build America Bond Rebates were an allowable source of funds but the amount deposited by the City of Evansville was not an allowable source of funds for the payment of capitalized interest on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010B.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

On July 31, 2012, the City of Evansville made an additional deposit of \$2,527,904 to the capitalized interest trust account. The source of this deposit was the City of Evansville Master TIF Fund. On October 1, 2012, the trustee transferred \$627,242 out of the capitalized interest trust account. The deposit made on June 21, 2011, had been made in error and was reversed.

On December 31, 2012, the balance remaining in the capitalized interest trust account was \$1,900,663. The balance of the capitalized interest trust account on December 31, 2012, should have been zero since the final capitalized interest payment was made on August 1, 2012.

5. *Verify that the costs of issuance of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B totaled approximately \$844,500 and that the Underwriter's discount was \$1,101,690.*

We examined the 2010A and 2010B construction trust account statements to verify that issuance costs disbursed totaled approximately \$844,500 per the bond documents. Also, we reviewed the bond documents and initial deposits into the trust accounts and verified that the underwriter's discount withheld from proceeds was in agreement with the bond documents and equaled \$1,101,690.

Results:

Results of procedures performed indicate, issuance costs were approximately \$844,500. The actual costs of issuance of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B were \$39,476 and \$795,118, respectively. The total of the two issues was \$834,594.

Results of procedures performed indicate, the underwriter's discount withheld from bond proceeds was \$1,101,690. The amount withheld from the bond proceeds of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B was \$52,110 and \$1,049,580, respectively.

6. *Verify that proceeds of the City of Evansville BANS (2008, 2009A and 2009B) and the Redevelopment Authority Bonds (2010A and 2010B) were disbursed for the purpose issued, construction of the Ford Center, and for no other purpose.*

We examined disbursements from the various BAN and Bond bank and trust accounts to verify, to the extent practical, that the proceeds were expended for no other purpose than the construction of the Ford Center.

Results:

Based on the disbursements reviewed, the following disbursements were noted that did not appear to be for the construction of the Ford Center. Exceptions are listed by corresponding bank or trust account reviewed.

- 1) 2008 BAN – \$1,000 was disbursed in 2012 for paying agent fees. \$31,151 was still in the City of Evansville's bank account and ledger (Redevelopment Arena BAN Fund) at December 31, 2012.

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(Continued)

- 2) 2009 BAN A – No exceptions noted. Balance of \$47,924 was transferred to the 2010B construction trust account in November of 2011.
 - 3) 2009 BAN B – No exceptions noted.
 - 4) 2010A construction trust account – Several items that appear to be operating expenses and not construction expenses were included in the \$562,500 paid to Venuworks for pre-opening consultation. Balance remaining in the trust account at December 31, 2012, was \$61,893.
 - 5) 2010B construction trust account – The trustee paid expenses in error totaling \$1,645,577 which were subsequently refunded to the trust account. Also, payments made on ten different construction contracts were greater than the contract amount for a total over payment of \$1,052,732. Over payments of \$702,741 were subsequently refunded to the 2010B construction trust account. As of December 31, 2012, \$349,991 had been overpaid and not refunded. The balance remaining in the 2010B construction trust account was \$2,794,405 on December 31, 2012.
7. *Verify that the City of Evansville held valid appropriations for 25 percent of the Ford Center's total cost (approximately \$32 million) in the years 2010, 2011, and 2012, as per the bond prospectus.*

We reviewed appropriations in the City of Evansville's Riverboat Fund and Master TIF Fund for the years 2010, 2011, and 2012 to verify that appropriations designated for arena building or construction equaled \$32 million.

Results:

Based on the procedure performed, the City of Evansville had appropriations available for the construction of the Ford Center of \$33,261,154 in the years 2010, 2011, and 2012. This amount includes the appropriation of \$5,862,669 for the purchase of the portion of the Executive Inn property that was allocated to the downtown hotel project.

8. *Verify that the City of Evansville expended approximately \$32 million on eligible expenditures (expenditures which match the appropriations) for the construction of the Ford Center.*

We examined disbursements made in the years 2010, 2011, and 2012 from the City of Evansville's Riverboat and Master TIF Funds from appropriations for the Ford Center construction project to determine if the City expended approximately \$32 million of City funds on the construction of the Ford Center.

Results:

Based on the procedure performed, the City of Evansville did not spend \$32 million of local funds on the Construction of the Ford Center.

The City expended, from appropriations available for arena construction, \$16,206,155 from the Master TIF Fund and \$15,898,745 from the Riverboat Fund for a total of \$32,104,900 in the years 2010, 2011, and 2012. But it does not appear that all expenditures were for arena construction.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

Included in the amount presented as expenditures from the Master TIF Fund is \$8,917,024 which was transferred to the additional project trust account. Expenditures of \$844,353, which appear to be Ford Center operating expenses, were paid from the additional project trust account. Also, the additional project trust account had a balance of \$1,312,602 at December 31, 2012. Additional operating expenses totaling \$200,363 were paid from the Master TIF Fund from the arena contractual appropriation. These amounts are included in the total of \$32,104,900 presented above. The total amount expended net of the remaining balance in the trust account and operating expenses paid from the trust account was \$29,747,582 as of December 31, 2012.

Also, included in the totals presented above is a transfer to the 2009 BAN A account of \$5,862,669 for the purchase of the portion of the Executive Inn Hotel allocated to the downtown hotel project.

9. *Verify that all Build America Bond Rebates have been received and deposited into the correct trust account (capitalized interest until substantial completion, Sinking Fund after substantial completion).*

We examined transactions posted to the trust statements of the 2010B capitalized interest trust account and the 2010B sinking fund trust account to verify that Build America Bond Rebates, in the amount stated on the bond debt service schedule, were received and deposited to the correct account.

Results:

Based on the procedure performed, it was determined that all Build America Bond rebates for the period reviewed were deposited to either the 2010B capitalized interest trust account or the 2010B sinking fund trust account. The only exception noted was that two of the payments were deposited into the incorrect account. The payment received on January 25, 2011 (prior to substantial completion) should have been deposited to the capitalized interest trust account instead of the sinking fund trust account and the payment on February 21, 2012 (after substantial completion) should have been deposited to the sinking fund trust account instead of the capitalized interest trust account.

10. *Verify that all Build America Bond Rebates have only been used to pay interest due on the Evansville Redevelopment Authority Series 2010B bonds.*

We traced all Build America Bond rebates into either the 2010B Capitalized Interest trust account or the 2010B Sinking Fund trust account. We reviewed all disbursements from the capitalized interest trust account to verify that the only disbursements were transfers to the sinking fund trust account for the payment of interest due. We reviewed all disbursements from the sinking fund trust account to verify that the only disbursements were payments of capitalized interest due on the bonds in agreement with the debt service schedule.

Results:

Based on the procedures performed, Build America Bond rebates were only used for interest payments on the 2010B Redevelopment Authority Lease Rental Revenue Bonds Series 2010B. The only disbursements from the 2010B capitalized interest fund were

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

transfers of interest income to the construction fund per the bond documents and transfers to the sinking account for interest payments. On October 1, 2012, the trustee transferred \$627,242 from the 2010B capitalized interest trust account. This amount had been deposited in error to the 2010B sinking fund trust account on June 21, 2011. The only disbursements from the 2010B sinking fund trust account were capitalized interest payments which were in agreement with the debt service schedule.

11. *Verify that any audit requirements imposed by the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B prospectus have been fully complied with by the Evansville Redevelopment Authority.*

We reviewed the bond prospectus to determine audit requirements and inquired of the Redevelopment Authority officials whether the Authority was in compliance with the audit requirements.

Results:

Based on the procedure performed, the Redevelopment Authority appears to be in compliance with audit requirements imposed by the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B bond prospectus.

Confirmation was received from the City Controller after consulting with the bond counsel of the Evansville Redevelopment Authority that the Authority has complied with the audit requirement contained in its bond documents.

12. *Verify that expenditures for arena construction were in compliance with the Evansville City Council's spending cap, Resolution C-2009-29, dated November 2, 2009, which limited spending to \$127,500,000.*

We reviewed Resolution C-2009-29 to determine expenditures included in or excluded from the \$127,500,000 total. We examined expenditures made for the project to verify, to the extent practical, if expenditures remained within the \$127,500,000 established in the resolution. The review was limited to expenditures made from the 2008 City of Evansville BAN Fund, the City of Evansville 2009A BAN Fund, the City of Evansville 2009B BAN Fund, the Evansville Redevelopment Authority Bonds Series 2010A and 2010B construction trust accounts, the additional project trust account, the City of Evansville Master TIF Fund (from appropriations for the Ford Center Project) and the City of Evansville Riverboat Fund (from appropriations for the Ford Center Project).

Results:

Based on the procedure performed our review of Resolution C-2009-29 indicates that the total cost of design and construction of the Downtown Multi-Purpose Arena was capped at \$127,500,000 excluding finance costs, furniture, and prior feasibility studies.

Based on the expenditures reviewed, the total amount spent on the design and construction of the Downtown Multi-Purpose Arena from the reviewed funds and trust accounts was \$128,279,998 as of December 31, 2012. This amount exceeds the cap of \$127,500,000 proposed by the City Council in Resolution C-2009-29.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

Included in the total is \$5,862,699 which is the portion of the Executive Inn Hotel purchase price allocated to the Downtown Hotel Project. Also, included are operating expenses paid to Venuworks as part of the \$562,500 pre-opening consulting contract because the amount of operating expenses paid could not be determined. Any overpayments on construction contracts that have not been repaid as of December 31, 2012, are also included in the above total.

Excluded from the above total are feasibility studies (\$310,539), finance costs (debt service reserve) (\$8,075,208), capitalized interest (\$17,440,598), issuance costs (\$1,404,493), bond discounts net of premiums (\$1,048,205), and furniture (\$315,482). Also excluded are operating costs of \$1,044,715 paid from funds appropriated for the arena.

If any arena construction costs were paid from any source not listed above they are not included in the above totals.

13. *Verify that no operating expenses for the Ford Center were paid out of bond proceeds or City funds appropriated for arena construction.*

We examined several disbursements made from the 2010A and 2010B construction trust accounts, the additional project trust account, the City of Evansville Riverboat Fund (arena building appropriations), and the City of Evansville Master TIF Fund (arena building appropriations) to determine if any arena operating expenses were paid from funds designated for construction.

Results:

Based on the disbursements reviewed, expenses which appear to be operating were paid from funds designated for construction.

Expenses of \$844,353 paid from the additional project trust fund appear to be operating expenses. The additional project trust account was funded by a transfer from the City of Evansville out of an appropriation for the arena building in the TIF Master Project Fund. Some of the items paid from the additional project trust fund were: electric bills, water bills, expenses to set up and take down events, supplies, insurance, and the monthly amount due under the computer maintenance contract. All expenses were incurred or were for a period after the date of substantial completion of the arena (September 30, 2011).

Also, the Authority paid Venuworks for pre-opening consultation services from the 2010 BondA construction trust account. The contract was paid in five monthly installments of \$112,500 each. After the last payment Venuworks submitted supporting documentation of expenses incurred and reimbursed under the contract. Some of the invoices included appeared to be for operating expenses (advertising, website design, stationary, cleaning supplies, will-call envelopes, etc.). The total amount of potential operating expenses paid under the Venuworks contract was not calculated.

In addition to the contract with the Redevelopment Authority the Redevelopment Commission also had a contract with Venuworks for pre-opening consultation services. The claims were paid from the Arena Project Contractual appropriation in the Master TIF Fund. This contract would be considered operating, and the amount paid in 2011 was \$200,363.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

14. *Verify that payments on construction contracts were within the approved contract amount plus approved change orders. Also, verify that contracts and change orders were properly approved by the appropriate board (Redevelopment Commission or Redevelopment Authority) or person (project manager).*

We reviewed several construction contracts to verify that payments were within the contract amount plus (minus) change orders. Also, for the contracts reviewed we verified that the contract or change order was approved by the appropriate board or designated person.

Results:

Based on the procedures performed, payments made on several contracts were not within the approved contract amount. Of the contracts reviewed ten were paid more than the contract amount plus (minus) change orders. The total amount overpaid was \$1,052,732. As of December 31, 2012, \$702,741 had been refunded to the 2010B construction trust account and \$349,991 had not been repaid. Also, one contract reviewed had been underpaid by \$28,685.

Based on the procedure performed, contracts were approved by the appropriate board (Redevelopment Commission or Redevelopment Authority). Also, most change orders were properly approved. Eight were noted that did not contain a signature for the Owner (Redevelopment Authority).

15. *Verify that invoices paid were properly documented.*

We examined several paid invoices to verify, to the extent practical, that disbursements were properly documented.

Results:

Based on the invoices reviewed, all paid invoices were not properly documented. The following exceptions were noted:

- 1) Invoices submitted by John J. Kish and Associates were not properly itemized. Invoices submitted contained only the period covered, a list of consulting services provided and total hours multiplied by hourly rate. An invoice detailed by date, services provided and hours charged was not provided.

The contract states: "The project director shall be paid within thirty days following the Commission's receipt of an itemized invoice showing the work performed and/or reimbursable expenses incurred by the Project Director."

- 2) The Evansville Redevelopment Authority had a contract with Venuworks dated April 27, 2011, for pre-opening services. The Authority paid Venuworks \$112,500 per month for five months in accordance with the contract.

The contract states: "No later than October 15th 2011 Venuworks is to provide a statement to the ERA detailing actual expenses and fees incurred for the execution of services." A expense reconciliation was received by the Evansville Redevelopment Authority on December 5, 2011 which showed actual expenses of \$562,331.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

The Redevelopment Commission also had a contract with Venuworks dated February 24, 2011, for pre-opening consulting services. Payments were made for expenses incurred based on actual receipts included with the invoice.

Included in the documentation submitted to the Authority on December 5, 2011, were receipts totaling \$27,695 for expenses that had already been reimbursed by the Commission. Another \$74,666 in expenses were included in the documentation that were either incurred before the start of the contract (April 1, 2011), pertained to a period after the termination date of the contract (October 1, 2011), were expenses excluded by the contract (office rent), were not expenses of the Evansville Ford Center Project, or were not documented. \$102,361 of the advance payment received of \$562,500 was not properly documented in the reconciliation presented.

The contract states: "In the event actual expenses are less than the amount already paid to Venuworks, the Venuworks shall provide with the statements, a check in repayment for any overage paid by the ERA to Venuworks over and above actual expenses."

- 3) Invoice No. 439025 dated September 15, 2011, for \$8,949 from Bingham McHale was referenced as Downtown Hotel not Multi-purpose arena. This invoice was paid from the additional project trust account which was funded from the Master TIF Fund from an appropriation for the arena building. This does not appear to be an expense of the arena construction project.
- 4) Of the twenty invoices submitted by Cripe Architects + Engineers only two contained a detail of the days and hours worked by each employee. The other eighteen invoices submitted only contained total hours per employee multiplied by the applicable hourly rate.

The contract states: "The Authority, acting for and on behalf of the City of Evansville, Indiana, agrees to pay all sums due Cripe in the normal course upon receipt of an itemized bill."

In addition, Cripe was reimbursed \$28,839 for expenses that do not appear allowable under the contract.

The contract states: "Cripe shall only be reimbursed for the following expenses: 1) Any out-of-state travel taken in connection with the performance of this Agreement, to the extent approved in advance by the Authority or the Project Director 2) Any additional expenses, not currently contemplated by this Agreement, which may be incurred by the Project Director at the specific request of the Owner."

Cripe did not receive reimbursement for any expenses incurred for out-of-state travel and no documentation was available documenting a specific request by the Redevelopment Authority for Cripe to incur any reimbursable expense.

16. *Verify deposits to and disbursements from the 2009 BAN A and 2009 BAN B bank accounts and the Redevelopment Authority 2010A and 2010B trust accounts were appropriate and approved by the Redevelopment Commission or Redevelopment Authority Board.*

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

We examined the bank statements of the 2009 BAN A and 2009 BAN B and trust statements of the Redevelopment Authority 2010 A and 2010 B trust accounts to verify, to the extent practical, that deposits and disbursements were appropriate and approved by the board.

Results:

Results of the procedure performed indicates that not all of the deposits to and disbursements from the 2009 BAN A and 2009 BAN B bank accounts and the 2010 A and 2010 B trust accounts were appropriate and/or approved by the Redevelopment Commission or Redevelopment Authority Board. Detailed below are the accounts reviewed and the exceptions noted:

- 1) 2009 BAN A - \$11,408 of BAN proceeds were drawn down and deposited into the BAN A bank account to reimburse the City of Evansville for expenses incurred by the City for the Arena construction project. Payment was never made to the City. The money remained in the bank account until the balance was transferred to the 2010B Construction account in November of 2011.
- 2) 2009 BAN B – No exceptions noted.
- 3) 2010 BOND A Construction Account – The Redevelopment Authority had an agreement for pre-opening consulting services with Venuworks. Five payments of \$112,500 each were made to Venuworks in compliance with the agreement. The documentation to support expenses incurred, which was provided later in accordance with the agreement, was not sufficient to support the entire amount received. Also, several of the disbursements appear to be operating expenses and should not have been paid from bond proceeds.
- 4) 2010 Bond A Capitalized Interest Account – The City of Evansville deposited \$79,700 to the capitalized interest account on July 31, 2012. The first payment due from the City of Evansville (Redevelopment Commission) under the lease agreement was payable in January of 2013. No payment should have been made to the Authority from the City prior to that date.
- 5) 2010 Bond A Sinking Account – No exceptions noted.
- 6) 2010 Bond B Construction Account - The trustee disbursed \$1,437,739 on September 16, 2011, and \$207,838 on May 26, 2012. These disbursements were made in error. In October of 2012, \$1,645,577 was refunded to the trust account.

Also, errors were made in payments on construction contracts resulting in a total overpayment of \$1,052,732. Overpayments in the amount of \$702,741 had been refunded by December 31, 2012. Overpayments in the amount of \$349,991 had not been refunded as of December 31, 2012.

When the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B bonds were issued proceeds were to be used to retire the City of Evansville 2008 BAN, 2009 BAN A and 2009 BAN B. The 2009 BAN A and BAN B were retired using bond proceeds on May 20, 2010. The 2008 BAN in the amount of \$495,540 was not retired until December 31, 2011, using funds from the additional project trust account.

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES
(Continued)

- 7) 2010 Bond B Capitalized Interest Account – On October 1, 2012, the trustee transferred \$627,242 out of the capitalized interest account. This amount had been deposited into the Sinking Account on June 21, 2011, in error.

Two checks were received from the City of Evansville. The first one was received on December 22, 2011, for \$1,168,995 and the second one was received on July 31, 2012, for \$2,527,904. The first lease payment is due from the City of Evansville (Redevelopment Commission) in January of 2013. The City of Evansville should not have made any debt service payments to the Authority prior to that date.

Lastly, the rebate received on January 25, 2011 (before substantial completion) was put into the sinking fund instead of the capitalized interest fund and the rebate received February 21, 2012 (after substantial completion) was put into capitalized interest fund instead of the sinking fund.

- 8) 2010 Bond B Sinking Account – The rebate received on January 25, 2011, was put into the sinking fund instead of the capitalized interest fund (prior to substantial completion). In addition, the rebate received February 21, 2012 was put into the capitalized interest fund instead of the sinking fund (after substantial completion).

Also, \$627,242 was deposited on June 21, 2011, by the trustee. This money did not belong to the Authority and was subsequently transferred out of the capitalized interest account on October 1, 2012.

- 9) 2010 Bonds Debt Service Reserve Account – No exceptions noted.

We were not engaged to and did not perform an examination, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the specified users listed above, and is not intended to be and should not be used by anyone other than these specified parties.



Bruce Hartman
State Examiner

April 3, 2013

CITY OF EVANSVILLE
FORD CENTER CONSTRUCTION PROJECT
EXIT CONFERENCE

The contents of this report were discussed on April 18, 2013, with Philip R. Hooper, Executive Director of the City of Evansville Department of Metropolitan Development; Kenneth Haynie III, President of the Evansville Redevelopment Authority Board; Lloyd Winnecke, Mayor of the City of Evansville; Steve Schaefer, Chief of Staff of the City of Evansville; Randy Alsmann, Vice President of the Evansville Redevelopment Commission; Russell Lloyd Jr., Controller of the City of Evansville; Janet Coudret, Deputy Controller of the City of Evansville; Jane E. Reel, Deputy Director of the City of Evansville Department of Metropolitan Development; Constance Robinson, President of the Common Council of Evansville; H. Dan Adams MD, Member of the Common Council of Evansville; Lana Abel, City of Evansville Department of Metropolitan Development; and John Friend, Finance Chairman of the Common Council of Evansville. The official response has been made a part of this report and may be found on pages 16 through 22.



City of Evansville
Office of the Controller
CIVIC CENTER COMPLEX, Room 300
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EVANSVILLE, IN 47708

Lloyd Winnecke, Mayor

Russell Lloyd Jr. CPA, Controller

April 29, 2013

State Board of Accounts
302 West Washington Street Room E418
Indianapolis, IN 46204

Reference: Official Response to the 2012 State Board of Accounts Agreed Upon Procedures Examination the Evansville Ford Center Construction Project 2009 - 2012

The City of Evansville and the Evansville Redevelopment Authority ("the City") recognizes the efforts performed by the Indiana State Board of Accounts ("the State") conducting the 2012 arena "The Ford Center" construction project examination engagement and we submit below our responses to your engagement findings. Our responses will detail our understanding of the issues raised by the State and outline our expected course of action for possible resolution.

For purposes of this letter, we are referring to the Evansville Arena "The Ford Center" construction project examination agreed upon procedures engagement for the fiscal years beginning January 1, 2009 and ending December 31, 2012.

Henceforth the City will identify only the enumerated procedures that produced certain exception items and the appropriate response and/or corrective actions.

Question 3. Verify that capitalized interest funds were established out of the proceeds of the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B in the approximate amount of \$17,440,598.

In response to paragraph 6, the City of Evansville transferred available Food and Beverage tax receipts (\$1,168,995) on December 22, 2011 to the 2010B capitalized interest account instead of the 2010B construction account. It is the City's position that Food and Beverage tax funds which preferably are

used for debt payments should be deposited in capitalized interest as a simpler method of accounting rather than commingled with construction funds.

The lease between the Evansville Redevelopment Authority (ERA) and City of Evansville, Indiana Redevelopment Commission (ERC) stipulates the first payment is due six months in advance of February 1, 2013 under Section 2 Rental Payments of the lease. The City will review the current procedure to pre-fund Arena bond payments six months in advance with legal counsel and the bond trustee for any possible policy corrective action.

Regarding the \$627,242 transferred into the 2010B sinking fund account June 21, 2011 and transferred out October 1, 2012 as referred to in paragraph 7, the City consulted with the bond trustee who admitted this was a bookkeeping error. This was a U. S. Government subsidy payment for another Build America Bond (BAB). The trustee serves several Build America Bonds and maintains a book of anticipated 8038CP filings and reimbursements for each issue. Two of the schedules in this book were reversed resulting in an incorrect deposit of funds that belonged to another issuer. The trustee's book has been corrected and the process of depositing BAB funds from the government has been modified to reduce the chance of future errors.

Q4. Verify that all interest payments on the Evansville Redevelopment Authority Lease Rental Revenue Bonds Series 2010A and 2010B during construction were made from the capitalized interest trust accounts. Also, verify that the amount paid was derived from the amount funded by bond proceeds verses transfers in from other City funds.

The City Attorney reviewed the bond prospectus and did not find the language quoted in paragraph 3. The City Attorney then reviewed the indenture and believes that the quoted language was a rephrasing of Section 3.01 (a) (3) thereof. That language is meant for the purpose of describing funds (the Series A Construction Account and the subaccount of the Series B Construction Account into which a Build America Bond Subsidy Payment was required to be and has been deposited) from which bond holders could force the City to make payments on capitalized interest accruing on the bonds. It was not intended to limit the City from making payments on capitalized interest accruing on the bonds from other funds available to the City which the City might determine to use for that purpose. In the City Attorney's opinion, it is not inappropriate or contrary to the language of the indenture for the City to use \$1,168,995 of the Food and Beverage Fund to pay capitalized interest.

Please refer to answers for Question 3 paragraph 6 and 7. See Question 3 final paragraph for explanation of \$627,242 deposit and reversal.

The City of Evansville made a payment July 31, 2012 of \$2,527,904 to the 2010B capitalized interest account. The trustee applied this to the Gross Debt Service Schedule. To correct the remaining balance in the 2010B capitalized interest account, the City will direct the trustee to pay the remaining balance of \$1,900,663 against the interest payment due August 1, 2013. Per the trustee, the revised Net Debt Service Schedule allows capitalized interest payments until February 1, 2014.

Q6. Verify that proceeds of the City of Evansville BANS (2008, 2009A and 2009B) and the Redevelopment Authority Bonds (2010A and 2010B) were disbursed for the purpose issued, construction of the Ford Center, and for no other purpose.

Pertaining to paragraph 1, the City of Evansville needs to reimburse the Redevelopment Commission 2008 BAN for \$1,000. The total amount of cash available in the 2008 BAN bank account will be closed and \$32,151.34 paid to the 2010B construction fund.

Pertaining to paragraph 4, the Indiana Code redevelopment statutes that govern the issuance of bonds allows for certain operating expenses to be paid to allow for the opening of a facility. These are called commissioning expenses. Please refer to IC 36-7-14-25.1 (a)(2) which specifically mentions "all reasonable and necessary architectural, engineering, legal, financing, accounting, advertising, bond discount, and supervisory expenses related to acquisition and redevelopment of the property". The VenuWorks contract for pre-opening expenditures are allowed under this statute which intends that a constructed facility may need funding to allow for opening.

Pertaining to paragraph 5, the trustee indicated two pay requests were incorrectly disbursed from the 2010B construction account. These funds were reimbursed to the account and an interest calculation performed and applied to the account to make the customer whole. Several pay disbursements were received requesting a payment of funds from the 2010B construction fund and also the contractor's escrow account, resulting in overpayments. Follow-up was made with the overpaid steel vendor to obtain funds and reimburse the construction fund by the trustee.

Q7. Verify that the City of Evansville held valid appropriations for 25% of the Ford Center's total cost (approximately \$32 million) in the years 2010, 2011 and 2012, as per the bond prospectus.

The City has verified the Equity portion of the arena construction project which includes Downtown TIF funds – real estate purchase (\$5,862,669), the 2008 BAN Taxable from the TIF (\$463,388), additional Downtown TIF funds (\$10,338,566), and riverboat gaming funds (\$15,796,621). This exceeds the 25% equity project cost of \$32 million. The total purchase price of the Executive Hotel property was \$11,862,669 and the Project Director allocated \$5,862,669 to the arena project as an equity contribution with the remainder allocated to the land for the future convention hotel project.

Q8. Verify that the City of Evansville expended approximately \$32 million on eligible expenditures (expenditures which match the appropriations) for the construction of the Ford Center.

The City expended over \$32 million on construction and necessary expenditures which we believe were "eligible" in order to open the arena. The City notes some of these were operational expenditures, but were necessary for the opening of the facility. In conference with the former Project Director and bond counsel concerning this use of funds, it is understood the objective of the arena project is not just to physically construct the facility but also to make it function as intended. These costs are commonly referred to as "commissioning", see IC 36-7-14-25.1(a)(2) in the Indiana redevelopment statute. These costs are anticipated in this type of capital project and are able to be capitalized under generally accepted accounting principles. The Project Director reviewed these costs with bond counsel and as

long as they were incurred prior to the date of substantial completion (September 30, 2011), they were capitalized. TIF funds were used from the additional project fund account to pay these expenses after September 30, 2011 when there was no facility and event revenue available to pay arena operating expenditures.

As noted, the City and Project Director believe using TIF additional project account funds are appropriate to pay arena initial operating expenditures. The end result is a construction project that was concluded within budgetary expectations. Additionally, the City desires to use the remaining construction funds for arena related projects such as a connection between the convention centre and the arena, or an arena storage building.

Q9. Verify that all Build America Bond Rebates have been received and deposited into the correct trust account (capitalized interest until substantial completion, sinking fund after substantial completion).

The City reviewed these transactions with the trustee. As of December 31, 2010 no new Build America Bonds can be issued, so this will not be an issue with future payments and their application to the sinking fund. All future subsidy payments will be made to the sinking fund by the trustee.

Q10. Verify that all Build America Bond Rebates have only been used to pay interest due on the Evansville Redevelopment Authority Series 2010B bonds.

See Question 3 final paragraph for explanation of \$627,242 deposit and reversal.

Q12. Verify that expenditures for arena construction were in compliance with the Evansville City Council's spending cap, Resolution C-2009-29, dated November 2, 2009, which limited spending to \$127,500,000.

The City believes the total arena project construction cost did stay within the Evansville City Council spending cap of \$127,500,000 evidenced by Resolution C-2009-29. The total design and construction expenditures of \$128,279,998 should be adjusted by two items, the \$1,312,612 remainder which are TIF additional project funds that were not spent and second, the contractor overpayment errors made by the bond trustee that net \$321,306. Subtracting these items leaves a total design and construction cost of \$126,646,080 which is \$853,920 less than the City Council spending cap.

Q13. Verify that no operating expenses for the Ford Center were paid out of bond proceeds or City funds appropriated for arena construction.

The City believes that no operational expenses were paid out of bond proceeds after the date of substantial completion, September 30, 2011. Any operational expenses after that date were paid from the City's equity portion of the additional projects fund account. As noted in the reply to Question 8, it is understood the objective of the arena project is not just to physically construct the facility but also to make it function as intended. These costs are anticipated in this type of capital project and are capitalized under generally accepted accounting principles when incurred prior to the date of substantial completion. TIF funds were properly used, the City contends, from the additional project fund account

to pay these expenses after September 30, 2011 when there was no facility and event revenue available to pay expenditures.

The VenuWorks pre-opening contract provided for services necessary to make the building function and were proper "commissioning" expenses as described above at Question 6. The City consulted with the former Project Director who believes a review of other major capital projects of this type will discover that similar services are capitalized. As previously mentioned, the VenuWorks pre-opening contracts were the subject of discussion with the bond attorneys and there was no objection noted to paying for them from the Series A bonds. The payments were for FF&E items and pre-opening operating type expenses allowed under IC 36-7-14-25.1 (a)(2). Payment from TIF additional projects account would have been proper whether they were characterized as capital or as operating.

Regarding the contract between VenuWorks and the Evansville Redevelopment Commission (ERC) the City contends the payments from the Master TIF Arena Contractual account are necessary for the pre-opening consultation to ensure a successful opening of the facility. The ERC has management responsibility for the facility and a desire to see a successful arena opening.

Q14. Verify that payments on construction contracts were within the approved contract amount plus approved change orders. Also, verify that contracts and change orders were properly approved by the appropriate board (Redevelopment Commission or Redevelopment Authority) or person (project manager).

Please refer to Question 6, last paragraph for an explanation of the \$1,052,732 overpayments. The trustee is working with a steel vendor for repayment. Refer to the answer to Question 6, for further details. Even though certain change orders were not signed by the Project Director, they were approved by him prior to board action.

Q15. Verify that invoices paid were properly documented.

The City consulted with John Kish and Associates (the former Project Director) to determine the billing arrangements agreed to for the firm's services. The City believes the firm complied with the contract and Mr. Kish indicated he consulted with the then Executive Director of the City Department of Metropolitan Development and he indicated the detail of the invoices were sufficient. The "services provided" included the nature of the services and hours billed within a date range.

In response to paragraph 2, the City (ERC) VenuWorks contract was initiated February 27, 2011, the City (ERA) VenuWorks contract was initiated April 1, 2011, both terminated October 1, 2011. VenuWorks mistakenly charged \$49,396 in March to the City ERA contract that was not yet in effect. The ERA will review this overlap but the intent was for VenuWorks to commence pre-opening services in an expeditious manner.

The City will confer with VenuWorks for \$27,695 that was billed after already being reimbursed and seek compensation. The City believes of the \$74,666 not properly documented, \$14,000 was rent owed by

ERC and \$22,000 was an invoice without documentation but the rest are correct. The City will seek proper documentation and the ERC should reimburse the 2010A construction Fund.

In response to paragraph 3, the City is requesting that the trustee contact the law firm to repay this amount to the arena TIF additional projects account.

In response to paragraph 4, the City Attorney contends the Cripe Architects and Engineers "Cripe" contract provides three things that go to the heart of the requirement of the report, as follows:

1. "For a period of eighteen (18) months, Cripe agrees to perform all services under this Agreement at the hourly rate as negotiated by the project manager, John Kish, based upon the salary of the individuals performing the services and the firm's INDOT audited overhead rate, for a total amount not to exceed Five Hundred Fourteen Thousand Eight Hundred Dollars (\$514,800.00), plus expenses, during the term of this Agreement." (Emphasis added).
2. "Any additional expenses, not currently contemplated by this Agreement, which may be incurred by the Project Director at the specific request of the Owner." (Emphasis added).
3. "The total cost for the services described herein will depend on the number of hours expended by Cripe." (Emphasis added).

Thus, at the discretion of the Project Manager (Project Director) a statement of the number of hours worked by an employee and the employee's salary rate therefor, if satisfactory to the Project Director, contained sufficient specificity for payment under the terms of the Cripe contract.

Thus, also, the Project Director's determination to allow reimbursement in the amount of \$28,839 for miscellaneous expenses including apartment rental due to savings below the applicable Federal per diem rate was satisfactory under the terms of the Cripe contract.

Q16. Verify deposits to and disbursements from the 2009 BAN A and B bank accounts and the Redevelopment Authority 2010A and 2010B trust accounts were appropriate and approved by the Redevelopment Commission or Redevelopment Authority Board.

Pertaining to paragraph 1, the City noted an invoice to the project architect for \$ 11,408 was paid from BAN A December 30, 2009. This amount was incorrectly transferred in November 2011 to Construction 2010B account. The City will review whether to retrieve these funds.

Pertaining to Paragraph 3, please refer to the answer for Question 13 for an explanation of the Venuworks payments.

Pertaining to paragraph 4, please reference Question 3, paragraph 2 for details of the City's payments to capitalized interest six months in advance.

Pertaining to paragraph 6, see reply to Question 6 paragraph 5. The Trustee noted an incorrect account was used to make construction disbursements. Disbursements should have been paid by the trustee

from another issuer. Funds were reimbursed to the account and interest applied to the account to make the customer whole. Reference Question 6, paragraph 5 for further details.

Pertaining to paragraph 6, second section, see Question 6 final paragraph for explanation of \$1,052,732 overpayments.

For the answer to paragraph 7, see Question 3, final paragraph, for explanation of \$627,242 deposit.

For the payments from the City made December 22, 2011 and July 31, 2012 refer to Question 3, paragraphs one and two.

For the rebate deposits please refer again to Question 3, paragraphs one and two.

For paragraph 8 please refer to Question 3 paragraphs one and two.

Respectfully Yours,

CITY OF EVANSVILLE

A handwritten signature in cursive script that reads "Russell G. Lloyd Jr. CPA". The signature is written in dark ink and is positioned above the printed name and title.

Russell G. Lloyd Jr., CPA
Controller