



## THE CITY OF SAN DIEGO

DATE: March 2, 2020  
TO: Honorable Council President Pro Tem Barbara Bry  
FROM: Kyle Elser, Interim City Auditor  
SUBJECT: Request for Investigation of 101 Ash Street Lease/Sale Agreement Allegations

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I received your memorandum dated February 27, 2020 requesting the City Auditor investigate additional circumstances surrounding the 101 Ash Street transaction as part of our pending audit of the City's real estate acquisitions process for 101 Ash Street and, potentially, other significant properties. Specifically, you requested that our review cover various allegations made in legal proceedings involving the Lessor, regarding information that may or may not have been provided to the City about the known condition of the building prior to entering into the lease-to-own agreement.

We could potentially review whether the Lessor provided accurate and complete documentation to the City regarding the known condition of the building. However, based on the documentation you provided, it appears this issue may already be under litigation, and thus Government Auditing Standards may limit our ability to audit this specific subject while litigation is ongoing. Additionally, if we are to review whether the Lessor provided accurate and complete documentation to the City regarding the known condition of the building, we will also need legal assistance to determine whether the City's contract(s) with the Lessor include sufficient clauses for us to obtain access to the Lessor's records related to this transaction. Ultimately, an investigation of allegations that the Lessor potentially defrauded the City in this transaction and a determination of the City's available remedies, may be best accomplished through a legal process rather than an audit.

Regardless of whether the Lessor acted in good faith, it is incumbent upon the City to conduct thorough due diligence prior to entering into an agreement for such a significant property and provide decisionmakers and the public with sufficient information on the proposed transaction and planned uses of the property. Thus, our review will include whether the City knew, or should have known, the extent of the asbestos contamination or other deficiencies of the 101 Ash Street property prior to entering into the lease-to-own agreement; whether the City neglected to perform essential due diligence in order to expedite the transaction; and whether



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reports to the City Council included sufficient, complete, and accurate information to allow the Council to make informed decisions regarding this matter.

As you know, based on your initial request for an audit of the City's handling of issues related to 101 Ash Street, we presented options for conducting such an audit to the Audit Committee, and the Committee voted unanimously to include an audit of the City's real estate acquisition process, including for 101 Ash Street, in our FY 2021 Audit Work Plan. Thus, while we will not initiate this audit immediately, we plan to begin our review as soon as audit staff completing their FY 2020 assignments become available. To that end, we plan to begin our search for a real estate consultant to assist us with our review of the 101 Ash Street transaction in the near future, so that we can initiate this audit as soon as possible.

Please contact me if you have questions.

Respectfully submitted,



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Kyle Elser  
Interim City Auditor

cc: Honorable Mayor Kevin Faulconer  
Honorable Members of the Audit Committee  
Honorable City Attorney Mara Elliott  
Andrea Tevlin, Independent Budget Analyst  
Kris Michell, Chief Operating Officer  
Aimee Faucett, Chief of Staff  
Jessica Lawrence, Policy Advisor, Office of the Mayor