

OVERSIGHT BOARD FOR SUCCESSOR AGENCY  
TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

AGENDA

City Council Chambers  
Montclair Civic Center  
5111 Benito Street  
Montclair, CA

Regular Meeting  
Wednesday, May 8, 2013  
6:00 p.m.

*As a courtesy, please silence your cell phones, pagers, and other electronic devices while the meeting is in session. Thank you.*

William Ruh – Chairman, Montclair Mayor Paul Eaton Appointee  
Tenice Johnson – Vice Chairperson, County of San Bernardino Citizen Appointee  
Terry Catlin – Inland Empire Utilities Agency Appointee  
Kim Erickson – Chaffey Community College District Appointee  
Janet Kulbeck – City of Montclair Employee Organization Appointee  
John Richardson – County of San Bernardino Appointee  
Kim Stallings – Ontario-Montclair School District Appointee

Page No.

I. PRELIMINARY MATTERS

- A. Call to Order
- B. Roll Call

II. PUBLIC COMMENT

*Any person wishing to address the Oversight Board on any matter, whether or not it appears on this agenda, is requested to complete a "Speaker Request" form, available at the door. The form should be completed and submitted to the Secretary prior to the beginning of this meeting or prior to an individual agenda item being heard by the Oversight Board. Each speaker will be afforded five minutes to address the Oversight Board. No action will be taken on any item not listed on the agenda pursuant to the Ralph M. Brown Act.*

III. APPROVAL OF MINUTES

- A. Minutes of the Special Oversight Board Meeting of February 27, 2013

IV. BUSINESS ITEMS

- A. Consider Report and Direction to Staff Regarding Solicitation of Proposals for Legal Counsel to the Oversight Board for the Former City of Montclair Redevelopment Agency 3
- B. Consider Receiving and Filing an Update on Recognized Obligation Payment Schedule 13-14A for July 1, 2013, Through December 31, 2013 5
- C. Consider Receiving and Filing an Update on Due Diligence Process of the Successor Agency for the Successor Agency to the City of Montclair Redevelopment Agency 14

V. COMMUNICATIONS

- A. Staff
- B. Chairman and Members

VI. ADJOURNMENT

*The above actions of the Oversight Board shall not become effective for three business days, pending any request for review by DOF. If DOF requests review of the above Board actions, it will have ten days from the date of the request to approve the Oversight Board action or return it to the Oversight Board for reconsideration; and the action, if subject to review by DOF, will not be effective until approved by DOF.*

*The next regularly scheduled Oversight Board meeting will be held on June 12, 2013, at 6:00 p.m. in the City Council Chambers.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Successor Agency Board after distribution of the Agenda packet are available for public inspection in the Office of the Secretary located at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.*

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Secretary at (909) 625-9416. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)*

*I, Yvonne L. Smith, Secretary, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 24 hours prior to this meeting on the bulletin board adjacent to the north door of Montclair City Hall on May 2, 2013.*

## AGENDA REPORT

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**SUBJECT:** CONSIDER PRESENTATIONS OF  
QUALIFICATIONS BY LEGAL FIRMS  
SUBMITTING PROPOSALS FOR  
OVERSIGHT BOARD COUNSEL

**DATE:** May 8, 2013  
**SECTION:** BUSINESS ITEMS  
**ITEM NO.:** A  
**FILE I.D.:** OBO050  
**DEPT.:** OVERSIGHT BOARD

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**REASON FOR CONSIDERATION:** The Oversight Board requested that legal counsel be provided to represent its interests. Three legal firms responded to the Request for Proposals (RFP) that was circulated by staff. The majority of Oversight Board Members indicated that interview of the firms at an Oversight Board meeting would be acceptable.

A paper copy of each response received to the RFP is included in the agenda packets for the Oversight Board's review and consideration.

**BACKGROUND:** After solicitation of proposals for Oversight Board Counsel in January 2013 proved unsuccessful, the Oversight Board directed staff to send RFPs directly to legal firms. Nine legal firms were identified by Oversight Board Members and Successor Agency Counsel as firms that may choose to serve as Oversight Board Counsel. The RFPs were sent via email to the identified firms on March 19, 2013. Three legal firms responded to the RFP by the April 4, 2013 deadline. Oversight Board Members were provided with electronic copies of the responses submitted by the firms on April 9, 2013 via email. The majority of Oversight Board Members desired each firm to make a brief presentation to the Oversight Board at a regularly scheduled meeting.

The three responding legal firms will give brief presentations on their proposals to the Oversight Board at the regularly scheduled May 8, 2013 Oversight Board meeting. The presentations are limited to 15 minutes and are scheduled as follows:

<i>Legal Firm</i>	<i>Presenter</i>	<i>Time</i>
Cummins & White, LLP	Edward Z. Kotkin	6:00 p.m.
Colantuono & Levin, PC	Holly Whatley	6:15 p.m.
Harper & Burns, LLP	John Harper	6:30 p.m.

After the presentations and questions to the legal firms, the Oversight Board may choose to select a firm for consideration as Oversight Board Counsel or choose to discuss the matter at a subsequent meeting of the Oversight Board.

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Prepared by: M. STAATS      Reviewed and Approved by: M. STAATS  
Proofed by: \_\_\_\_\_      Presented by: \_\_\_\_\_

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The Oversight Board should note that any contractual agreement with a legal firm must be entered into by the Successor Agency, and the Oversight Board would be requested to consider approval or denial of the agreement submitted by the Successor Agency. The Oversight Board may wish to consider several options in relation to Oversight Board Counsel. For example, the Oversight Board may not find it necessary to have Oversight Board Counsel attend every meeting but may only want Counsel to review certain documents or attend select meetings.

**FISCAL IMPACT:** The Successor Agency would become responsible for the legal fees associated with retention of Oversight Board Counsel.

**RECOMMENDATION:** Staff recommends the Oversight Board consider the presentation of qualifications by legal firms submitting proposals for Oversight Board Counsel.

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER RECEIVING AND FILING AN UPDATE ON RECOGNIZED OBLIGATION PAYMENT SCHEDULE 13-14A FOR JULY 1, 2013 THROUGH DECEMBER 31, 2013	<b>DATE:</b> May 8, 2013 <b>SECTION:</b> BUSINESS ITEMS <b>ITEM NO.:</b> B <b>FILE I.D.:</b> OBO050 <b>DEPT.:</b> OVERSIGHT BOARD
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**REASON FOR CONSIDERATION:** Successor Agency staff seeks to provide the Oversight Board with an update on Recognized Obligation Payment Schedule (ROPS) 13-14A for July 1, 2013, through December 31, 2013.

**BACKGROUND:** The Oversight Board approved the ROPS for July 1, 2013, through December 31, 2013, on February 27, 2013. The ROPS was submitted to DOF for consideration on February 28, 2013. On April 13, 2013 staff received a response from the Department of Finance (DOF) regarding the ROPS (Exhibit 1). DOF took issue with legal costs, costs for weed abatement, and administrative costs. Successor Agency staff filed a request for Meet and Confer (Exhibit 2) on April 15, 2013.

A Meet and Confer was conducted with DOF on April 22, 2013. Staff attempted to explain the necessity for legal fees as a part of the Redevelopment Trust, and the issue of administrative expenses was discussed. At this time, staff has not received a final determination from DOF concerning ROPS 13-14A.

**FISCAL IMPACT:** ROPS 13-14A will determine the amount of funding the Successor Agency receives for existing obligations and administrative costs for July 1, 2013, through December 31, 2013.

**RECOMMENDATION:** Staff recommends the Oversight Board receive and file an update on Recognized Obligation Payment Schedule 13-14A for July 1, 2013, through December 31, 2013.

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Prepared by: <u>M. STAATS</u>	Reviewed and Approved by: <u>M. STAATS</u>
Proofed by: _____	Presented by: _____

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DEPARTMENT OF  
**FINANCE**

Exhibit 1

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

April 13, 2013

Mr. Donald Parker, Finance Director  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Dear Mr. Parker:

Subject: Recognized Obligation Payment Schedule

Pursuant to Health and Safety Code (HSC) section 34177 (m), the City of Montclair Successor Agency (Agency) submitted a Recognized Obligation Payment Schedule (ROPS 13-14A) to the California Department of Finance (Finance) on February 28, 2013 for the period of July through December 2013. Finance has completed its review of your ROPS 13-14A, which may have included obtaining clarification for various items.

HSC section 34171 (d) defines enforceable obligations. Based on a sample of line items reviewed and application of the law, the following do not qualify as enforceable obligations:

- Item Nos. 13, 16 and 19 – Legal and Consulting Service costs totaling \$80,000. Correspondence with the Agency revealed actual obligations do not exist at this time. Therefore, these items are ineligible for funding on the ROPS at this time.
- Item No. 23 – Professional Service Costs for assets transferred to the City of Montclair Housing Agency in the amount of \$5,000. HSC section 34176 (a) (1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county. Since the City of Montclair Housing Agency assumed the housing functions, the administrative costs associated with these functions are the responsibility of the housing successor. Therefore, this item is not an enforceable obligation and is not eligible for funding on the ROPS.
- Claimed administrative costs exceed the allowance by \$61,289. HSC section 34171(b) limits fiscal year 2013-14 administrative expenses to three percent of property tax allocated to the successor agency or \$250,000, whichever is greater. As a result, the Agency is eligible for \$250,000 in administrative expenses. Although \$250,000 is claimed for administrative cost, Item No. 10 for legal services, in the amount of \$40,000, is considered an administrative expense and should be counted toward the cap. Therefore, \$61,289 of excess administrative cost is not allowed.

Except for items denied in whole or in part as enforceable obligations, Finance is not objecting to the remaining items listed on your ROPS 13-14A. This determination applies only to items where funding was requested for the six month period. If you disagree with the determination with respect to any items on your ROPS 13-14A, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet and confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's maximum approved Redevelopment Property Tax Trust Fund (RPTTF) distribution for the reporting period is \$2,913,283 as summarized below:

<b>Approved RPTTF Distribution Amount For the period of July through December 2013</b>	
Total RPTTF funding requested for obligations	\$ 2,720,783
Minus: Six-month total for items denied or reclassified as administrative cost	
Item 11*	20,000
Item 13	5,000
Item 16	25,000
Item 19	5,000
Item 23	2,500
Total approved RPTTF for enforceable obligations	\$ 2,663,283
Plus: Allowable RPTTF distribution for ROPS 13-14A administrative cost	250,000
Minus: ROPS II prior period adjustment	-
<b>Total RPTTF approved for distribution:</b>	<b>\$ 2,913,283</b>

\*Reclassified as administrative cost

Pursuant to HSC Section 34186 (a), successor agencies were required to report on the ROPS 13-14A form the estimated obligations and actual payments (prior period adjustments) associated with the July through December 2012 period. HSC Section 34186 (a) also specifies that the prior period adjustments self-reported by successor agencies are subject to audit by the county auditor-controller (CAC) and the State Controller. The amount of RPTTF approved in the above table includes the prior period adjustment resulting from the CAC's audit of the Agency's self-reported prior period adjustment.

Please refer to the ROPS 13-14A schedule that was used to calculate the approved RPTTF amount:

[http://www.dof.ca.gov/redevelopment/ROPS/ROPS 13-14A Forms by Successor Agency/](http://www.dof.ca.gov/redevelopment/ROPS/ROPS%2013-14A%20Forms%20by%20Successor%20Agency/).

This is Finance's final determination related to the enforceable obligations reported on your ROPS for July 1 through December 31, 2013. Finance's determination is effective for this time period only and should not be conclusively relied upon for future periods. All items listed on a future ROPS are subject to a subsequent review and may be denied even if it was or was not denied on this ROPS or a preceding ROPS. The only exception is for those items that have received a Final and Conclusive determination from Finance pursuant to HSC 34177.5 (l). Finance's review of items that have received a Final and Conclusive determination is limited to confirming the scheduled payments as required by the obligation.

Mr. Donald Parker  
April 13, 2013  
Page 3

The amount available from the RPTTF is the same as the amount of property tax increment that was available prior to enactment of ABx1 26 and AB 1484. This amount is not and never was an unlimited funding source. Therefore, as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available to the successor agency in the RPTTF.

To the extent proceeds from bonds issued after December 31, 2010 exist and are not encumbered by an enforceable obligation pursuant to 34171 (d), HSC section 34191.4 (c)(2)(B) requires these proceeds be used to defease the bonds or to purchase those same outstanding bonds on the open market for cancellation.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Marilyn J. Staats, Director of Redevelopment/Public Works, City of Montclair  
Ms. Vanessa Doyle, Auditor Controller, San Bernardino County  
California State Controller's Office



# MEET AND CONFER REQUEST FORM

**Instructions:** Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment\_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment\_Administration@dof.ca.gov.

**AGENCY (SELECT ONE):**

- Successor Agency       Housing Entity

**AGENCY NAME:** SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY

**TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):**

- Housing Assets Transfers       Due Diligence Reviews       ROPS Period: 7/1/13 – 12/31/13

**DATE OF FINANCE’S DETERMINATION LETTER:** April 13, 2013

**REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):**

- Meeting at Finance       Conference Call

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## DETAIL OF REQUEST

### A. Summary of Disputed Issue(s) *(Must be specific.)*

1. Item Nos. 13, 16 and 19 - Legal and Consulting Service costs totaling \$80,000. Correspondence with the Agency revealed actual obligations do not exist at this time. Therefore, these items are ineligible for funding on the ROPS at this time.
2. Item No. 23 - Professional Service Costs for assets transferred to the City of Montclair Housing Agency in the amount of \$5,000, HSC section 34176 (a) (1) states if a city, county, or city and county elects to retain the authority to perform housing functions previously performed by a RDA, all rights, powers, duties, obligations, and housing assets shall be transferred to the city, county, or city and county; Since the City of Montclair Housing Agency assumed the housing functions, the administrative costs associated with these functions are the responsibility of the housing successor. Therefore, this item is not an enforceable obligation and is not eligible for funding on the ROPS.
3. Claimed administrative costs exceed the allowance by \$61,289, HSC section 34171 (b) limits fiscal year 2013-14 administrative expenses to three percent of property tax allocated to the successor agency or \$250,000, whichever is greater. As a result, the Agency is eligible for \$250,000 in administrative expenses. Although \$250,000 is claimed for administrative cost, Item No. 10 for legal services, in the amount of \$40,000, is considered an administrative expense and should be counted toward the cap. Therefore, \$61,289 of excess administrative cost is not allowed.

### B. Background/History *(Provide relevant background/history, if applicable.)*

1. For items Nos. 13, 16 and 19 – Legal Costs totaling \$80,000, the ROPS Form is more than just a mechanism to request monies from the RPTTF. It also allows a Successor Agency to spend monies for an enforceable obligation. It is indicated that these are not enforceable obligations as they "do not exist at this time". That conclusion is in error as Section 34171 (d) (1) indicates "Enforceable obligation" means any of 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 judgements, 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.

Nowhere is it cited that invoices must be present or services actually provided at any specific point in time to qualify as an "enforceable obligation". The ROPS covers the next six month period and therefore estimates of costs to be incurred have to be used for professionals which may or may not be used during that upcoming period. Since all monies utilized by a Successor Agency must be listed on a ROPS, to disallow an enforceable obligation during a

period in the future because exact costs are unknown presently precludes those services from being utilized at all during the ROPS period. This occurs because they are then not listed on the ROPS. Therefore, these are valid enforceable obligations and should be allowed.

Additionally, the Successor Agency is presently pending a final DOF determination on its Meet and Confer relating to the Other Funds DDR. Information has been provided to DOF indicating that the amount to be paid to the taxing entities, as redetermined by DOF, is grossly incorrect. Should DOF reaffirm its computation, in its final determination, litigation would be pursued and the estimated costs would become actual costs for litigation services.

2. Item No. 23. Nowhere on the ROPS does it indicate that these services are for properties transferred to the Successor Housing Entity. In fact, the professional services listed are for landscape maintenance companies and are related to properties currently held that will be disposed of when the general asset disposition process occurs. These do not relate to properties transferred to the Successor Housing Entity and therefore the conclusion drawn by the reviewer is incorrect. Had the reviewer inquired about these properties, instead of making a general assumption, this comment could have been avoided. Since these costs are not costs of the Successor Housing Entity, they are a valid enforceable obligation of the Successor Agency and they should be allowed.
3. We understand that the amount of administrative allowance claimed exceeds the limitation that is potentially payable from the RPTTF. AB 26 and 1484 limited the amount that is payable from the RPTTF but Section 34171(b) did not disallow administrative items, approved by the Oversight Board, because of that limitation. In the past, costs in excess of the RPTTF limitation have been paid with Reserves but these are being eliminated by the Other Funds DDR, currently pending a final DOF determination. Therefore, costs in excess of the RPTTF limitation, approved by the Oversight Board, will have to be City loans in accordance with Section 37173 (h) as follows:

Section 37173 (h) The city, county, or city and county that authorized the creation of a redevelopment agency may loan or grant funds to 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 those loans.

Therefore, these would be a future enforceable obligation so the determination that these are "not allowed" is incorrect and should either be modified indicating that they potentially exceed an RPTTF limitation or the disallowance should be eliminated.

Item No. 10 relates to legal costs associated with the firm of Stradling, Yocca, Carlson & Rauth which are Bond Counsel for the bond issues of the Successor Agency. Since these costs would be directly related to Successor Agency bonds which are enforceable obligations payable from RPTTF, these costs would be no different than other operational costs of the bonds. Therefore, to indicate that these should be move to the Successor Agency's administrative allowance is incorrect. All costs directly associated with enforceable

obligations to be paid from the RPTTF should be listed there and are not part of the Successor Agency's administrative allowance.

**Agency Contact Information**

Name: **Donald L. Parker, CPA**  
Title: **Finance Director**

Phone: (909) 625-9418

Email: dparker@cityofmontclair.org

Date: 4/29/2013

Name: **Marilyn Staats**  
Title: **Deputy City Manager**

Phone: (909) 625-9412

Email: mstaats@cityofmontclair.org

Date: 4/29/2013

**Department of Finance: Local Government Unit Use Only**

REQUEST TO MEET AND CONFER DATE:  APPROVED  DENIED

REQUEST APPROVED/DENIED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

MEET AND CONFER DATE/TIME/LOCATION: \_\_\_\_\_

MEET AND CONFER SESSION CONFIRMED:  YES DATE CONFIRMED: \_\_\_\_\_

DENIAL NOTICE PROVIDED:  YES DATE AGENCY NOTIFIED: \_\_\_\_\_

Form DF-MC (Revised 9/10/12)

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER RECEIVING AND FILING AN UPDATE ON THE DUE DILIGENCE PROCESS FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY	<b>DATE:</b> May 8, 2013 <b>SECTION:</b> BUSINESS ITEMS <b>ITEM NO.:</b> C <b>FILE I.D.:</b> OBO050 <b>DEPT.:</b> OVERSIGHT BOARD
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**REASON FOR CONSIDERATION:** Successor Agency staff seeks to provide the Oversight Board with an update on the Due Diligence process.

**BACKGROUND:** On January 9, 2013, the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency adopted Resolution No. 13-01, approving the Due Diligence review submitted by the accounting firm of Teaman, Ramirez & Smith, Inc. As Oversight Board Members will recall, this Due Diligence Review was conducted to determine the nonhousing unobligated fund balances available for transfer to the taxing agencies. The primary findings of the Due Diligence Review concluded \$6,323,562 was available for distribution to the taxing agencies. Unobligated balances in the former Redevelopment Agency Housing Fund in the amount of \$7,884,598 were previously remitted to the County for distribution to the taxing agencies.

After approval by the Oversight Board, the Due Diligence Review was submitted to the Department of Finance (DOF) for consideration. The initial correspondence dated March 19, 2013, from DOF regarding the Due Diligence Review indicates its belief that \$10,902,839 should be available for distribution to the taxing agencies (Exhibit 1). Successor Agency staff filed a Meet and Confer Request (Exhibit 2) upon receipt of the letter from DOF. The Meet and Confer Request noted over \$2.5 million of the \$10 million indicated by DOF as unobligated was actually money paid to the trustee for debt service payments on bonds and no longer available to the Successor Agency. A Meet and Confer session was conducted with DOF on March 26, 2013, during which Successor Agency staff explained its position regarding funds available for distribution.

On April 18, 2013, DOF issued its letter of determination (Exhibit 3) adjusting its finding regarding unobligated balances of the former Redevelopment Agency to \$7,876,440. Successor Agency staff issued a check to the County of San Bernardino (Exhibit 4) for \$7,876,440 on April 23, 2013. Unobligated balances from the former City of Montclair Redevelopment Agency, with the exception of funds from bond issues, have now been distributed. The Successor Agency will be seeking its Finding of Completion from DOF.

**FISCAL IMPACT:** As indicated, the Successor Agency has issued a check to the County of San Bernardino for \$7,876,440 representing the unobligated balance of former City of

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Prepared by: <u>    M. STAATS    </u>	Reviewed and Approved by: <u>    M. STAATS    </u>
Proofed by: _____	Presented by: _____

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Montclair Redevelopment Agency funds as determined by DOF. The County of San Bernardino is responsible for distributing these funds to the affected taxing agencies.

**RECOMMENDATION:** Staff recommends the Oversight Board receive and file the update on the due diligence process of the Successor Agency to the City of Montclair Redevelopment Agency.

**DEPARTMENT OF  
FINANCE**

EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

March 19, 2013

Mr. Donald Parker, Finance Director  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Dear Mr. Parker

Subject: Other Funds and Accounts Due Diligence Review

Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Montclair Successor Agency (Agency) submitted an oversight board approved Other Funds and Accounts (OFA) Due Diligence Review (DDR) to the California Department of Finance (Finance) on January 10, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Pursuant to HSC section 34179.6 (d), Finance has completed its review of your DDR, which may have included obtaining clarification for various items.

HSC section 34179.6 (d) authorizes Finance to adjust the DDR's stated balance of OFA available for distribution to the taxing entities. Based on our review of your DDR, an adjustment in the amount of \$4,579,277 has been made to the Agency's request to retain funds for the following transactions:

- Bond service obligations in the amount of \$2,509,706. This amount has been transferred to the Trustees and was not included in the total amount of assets held as of June 30, 2012.
- Recognized Obligation Payment Schedules (ROPS) items totaling \$339,845 to meet obligations requested during the January through June 2013 period, which falls outside the review period of this DDR.
- Reserves in the amount of \$1,729,726 due to a shortfall in Redevelopment Property Tax Trust Funds; however, the Agency did not request the use of reserves during the ROPS period July through December 2012.

Finally, the Agency has not adequately proven there will be insufficient property tax revenues to pay for these obligations. HSC section 34179.5 (c) (5) (D) requires an extensive analysis before retention of current unencumbered balances can be contemplated. This includes but is not limited to, providing a detail of the projected property tax revenues and other general purpose revenues to be received by the Agency, together with both the amount and timing of the bond debt service payments, for the period in which the oversight board anticipates the Agency will have insufficient property tax revenue to pay the specified obligations. It is not evident the thorough analysis required by HSC section 34179.5 (c) (5) (D) was conducted. Further, it is not

evident that future property tax revenue will be insufficient or that there is an immediate need to retain these balances.

Should a deficit occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h); requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

If you disagree with Finance's adjusted amount of OFA balances available for distribution to the taxing entities, you may request a Meet and Confer within five business days of the date of this letter. The Meet and Confer process and guidelines are available at Finance's website below:

[http://www.dof.ca.gov/redevelopment/meet\\_and\\_confer/](http://www.dof.ca.gov/redevelopment/meet_and_confer/)

The Agency's OFA balance available for distribution to the affected taxing entities is \$10,902,839 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 6,323,562
Finance Adjustments	
Add:	
Requested retained balances not supported	\$ 4,579,277
<b>Total OFA available to be distributed:</b>	<b>\$ 10,902,839</b>

Absent a Meet and Confer request, HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the

Mr. Donald Parker  
March 19, 2013  
Page 3

Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC section 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Nichelle Thomas, Supervisor or Susana Medina Jackson, Lead Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Marilyn Staats, Deputy City Manager, City of Montclair  
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County  
California State Controller's Office



# MEET AND CONFER REQUEST FORM

**Instructions:** Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment\_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment\_Administration@dof.ca.gov.

**AGENCY (SELECT ONE):**

Successor Agency       Housing Entity

**AGENCY NAME:** City of Montclair as Successor Agency for City of Montclair Redevelopment Agency

**TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):**

Housing Assets Transfers       Due Diligence Reviews       ROPS Period \_\_\_\_\_

**DATE OF FINANCE’S DETERMINATION LETTER:** 03/19/13

**REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):**

Meeting at Finance       Conference Call

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## DETAIL OF REQUEST

### A. Summary of Disputed Issue(s) *(Must be specific.)*

1. Bond service obligations in the amount of \$2,509,706. This amount has been transferred to the Trustees and was not included in the total amount of assets held as of June 30, 2012.
2. Recognized Obligation Payment Schedules (ROPS) items totaling \$339,845 to meet obligations requested during the January through June 2013 period, which falls outside the review period of this DDR.
3. Reserves in the amount of \$1,729,726 due to a shortfall in Redevelopment Property Tax Trust Funds; however, the Agency did not request the use of reserves during the ROPS period July through December 2012.

### B. Background/History *(Provide relevant background/history, if applicable.)*

1. The amount of \$2,454,048.98 was received from the County of San Bernardino on June 18, 2012 as a payment from the RPTTF. As such, it was placed in the RORF accounts of the Successor Agency as specified by AB 1484. Since this DDR covered all monies held by the Successor Agency as of June 30, 2012 that amount was also present in the total assets of \$15,882,611 shown on the first line of our computation. This payment from the RPTTF was \$55,657.02 short of what was needed for debt services on the bond outstanding for the period July 1, 2012 through December 31, 2012. To provide that funding, \$2,509,706.00 was paid to the bond trustee in August 2012. On the DDR, the amount was included in total assets and then removed as it was paid to the trustee after June 30, 2012. These monies are not available for disbursement to the taxing entities and are not available to the Successor Agency as they are held by the trustee for agency bonds in accordance with bonding requirements. During the review process, on January 24, 2013, an email was sent by Mr. Donald L. Parker, Finance Director to Ms. Meng, DOF reviewer, where he indicated "Since these monies were held in the agency RORF funds, which is part of total assets, but they were sent to the trustee they have been removed in Procedure 8 of the DDR computation." Therefore, the conclusion reached that these monies are available is incorrect and should be eliminated.
2. The amount of \$339,845, adjusted in the DOF determination letter, is composed of two amounts on our submitted DDR computation. These were as follows.

The first is \$146,610 which was listed as ROPS III reserve balances required for obligations. This is the amount noted on ROPS III as "Reserve Balances" to be utilized to pay enforceable obligations for the period January through June 2013. Since the DDR was submitted in December 2012, and will result in amounts which are not deducted being swept to the taxing entities, this amount was needed to provide for payment of enforceable obligations that were indicated to have reserves utilized. Since those monies were utilized for those purposes, they are

not available for payment to the taxing entities. Therefore, this conclusion is incorrect and should be eliminated for this portion of the adjustment.

The second is \$193,235 which was to provide for an administrative reserve as, prior to the ROPS III payment, the Successor Agency had never received an administrative allowance. Since we received this allowance as part of our January 2013 disbursement from the RPTTF, we concur with this portion of the adjustment.

3. This adjustment for 1,729,726 again is composed of two items shown on our DDR computation. These were as follows.

First, we indicated \$229,726 as reserves amounts utilized after June 30, 2012 because of RPTTF shortfalls. In processing the RPTTF payment, the County of San Bernardino made errors in computing the pass through payments to other taxing entities. Those errors resulted in overpayments to them of \$1,133,518.61. As such, the Successor Agency did not receive the full allocation due it and had to utilize reserve amounts on hand to pay enforceable obligations. The DOF determination indicated "the Agency did not request the use of reserves during the ROPS period July through December 2012" and this was the reason for denial. As these were monies on hand that were never received from the RPTTF no reserve request was required. In accordance with DOF stated policy, reserves on hand were to be utilized prior to a DOF request and that was what was being done. This amount represents the utilization of reserve amounts after June 30, 2012. Since these monies were utilized, they are not available for distribution to the taxing entities. This is what the computation showed. Therefore, this conclusion is incorrect and should be eliminated for this portion of the adjustment.

Second, we indicated a reserve of \$1,500,000 to be retained for use in funding future administrative allowances and/or litigation costs. As indicated in our footnote, present on the computation, our Successor Agency had, when this computation was submitted, not received administrative allowances due to County computational errors and determinations by DOF to not "true up" those errors. Those errors were corrected, by the County, in the most recent RPTTF payment but ultimately the correction resulted in a larger distribution of residual amounts to the taxing entities and the Successor Agency received no additional funding.

Since the filing of this DDR, the Successor Agency has received its first administrative allowance payment. Hopefully, those will continue; however, as discussed above, due to County computational errors and arbitrary determinations not to correct those by DOF we have had to utilize reserves to make bond debt service and administrative allowance payments. Once this DDR payment is made, those reserves will no longer be present. We feel that a small reserve of \$250,000 would be appropriate to cover cash flow needs when these situations result. Hopefully, that could be approved without an analysis as we cannot reflect in any analysis how and when errors by the County will occur. Additionally, the City of Montclair should not have to advance monies to cover County errors created by the process specified in AB 1484. This small reserve would provide for that situation.

**C. Justification** *(Provide additional attachments to this form, as necessary.)*

Please be aware that the computation present in our DDR was based upon cash that we had in the respective accounting funds at the time they were performed. While determination can be made as to the amount of those monies that we are allowed to keep, such determinations cannot be made of supposedly additional amounts not present or to eliminate monies utilized as those monies do not exist in our Successor Agency.

In the determinations described above, most adjustments are attributable to incorrect conclusion being reached by the reviewer working on our DDR. In one case, we corresponded indicating that the item was properly reflected; however, apparently that correspondence was ignored as the item was incorrectly adjusted. We can provide documentation of the amounts we showed on the DDR if required. Had the reviewer posed the adjustments noted to us for clarification and/or discussion we would have been able to address them and this meet and confer might have been avoided. That would have saved us and DOF time and effort and ultimately administrative costs in this process. Hopefully, in the future, that process can be implemented and incorrect conclusions eliminated.

**Agency Contact Information**

Name: Donald L. Parker, CPA  
Title: Finance Director  
Phone: (909) 625-9418  
Email: dparker@cityofmontclair.org  
Date: March 19, 2013

Name: Marilyn Staats  
Title: Deputy City Manager  
Phone: (909) 625-9412  
Email: mstaats@cityofmontclair.org  
Date: March 19, 2013

**Department of Finance Local Government Unit Use Only**

REQUEST TO MEET AND CONFER DATE:  APPROVED  DENIED

REQUEST APPROVED/DENIED BY: \_\_\_\_\_ DATE: \_\_\_\_\_

MEET AND CONFER DATE/TIME/LOCATION: \_\_\_\_\_

MEET AND CONFER SESSION CONFIRMED:  YES DATE CONFIRMED: \_\_\_\_\_

DENIAL NOTICE PROVIDED:  YES DATE AGENCY NOTIFIED: \_\_\_\_\_



April 18, 2013

Mr. Donald Parker, Finance Director  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763

Dear Mr. Parker

Subject: Other Funds and Accounts Due Diligence Review

This letter supersedes the California Department of Finance's (Finance) original Other Funds and Accounts (OFA) Due Diligence Review (DDR) determination letter dated March 19, 2013. Pursuant to Health and Safety Code (HSC) section 34179.6 (c), the City of Montclair (Agency) submitted an oversight board approved OFA DDR to Finance on January 10, 2013. The purpose of the review was to determine the amount of cash and cash equivalents available for distribution to the affected taxing entities. Finance issued an OFA DDR determination letter on March 19, 2013. Subsequently, the Agency requested a Meet and Confer session on one or more items adjusted by Finance. The Meet and Confer session was held on March 26, 2013.

Based on a review of additional information and documentation provided to Finance during the Meet and Confer process, Finance has completed its review of those specific items being disputed. Specifically, the following adjustments were made:

- The Agency requested to retain \$2,509,706 for bond debt service payments. Finance previously increased the OFA balance by this amount. Our review indicated the fiscal agent used bond reserve funds to make bond debt service payments on the Agency's behalf prior to the Agency's receipt of Redevelopment Property Tax Trust Funds (RPTTF). The Agency provided documentation that upon receipt of RPTTF totaling \$2,454,049 for the July through December 2012 Recognized Obligation Payment Schedule (ROPS II) period, the Agency repaid the bond reserve fund a total of \$2,509,706. We note the Agency only reported it expended \$2,454,049 on the Prior Period Adjustment Worksheet of the July through December 2013 Recognized Obligation Payment Schedule (ROPS 1314A) period; however, because the additional funds were used to make bond debt service payments, the full \$2,509,706 will be permitted to be retained.
- The Agency requested to retain \$339,845 for items listed on its January through June 2013 Recognized Obligation Payment Schedules (ROPS III) period. This amount includes \$193,235 to provide for an administrative reserve and \$146,610 for items listed on the ROPS III using reserve funds. Our review indicates the Agency received sufficient RPTTF to pay for all items approved for RPTTF funding; therefore, the retention of \$193,235 is not permitted. As related to the \$146,610 in approved ROPS

III items for funding out of reserves, the Agency will be permitted to retain these funds. Therefore, the balance available for distribution will be increased by \$193,235.

- The Agency requested to retain \$1,729,726 to meet approved administration and enforceable obligations. Our review indicated for the ROPS II period, Finance approved \$11,403,685 from the Redevelopment Property Tax Trust Fund. The Agency received a distribution of \$2,454,049 on June 20, 2012 for the ROPS II period which was therefore included in the June 30, 2012 balance. Per HSC section 34179.5 (c), an Agency is permitted to retain balances that are needed to satisfy those items on the ROPS schedule for the current fiscal year. Therefore, because the Agency did not receive the entire approved amount for the ROPS II period, the Agency will be permitted to retain \$370,083 in reserve funds used to pay for unfunded Finance approved enforceable obligations in ROPS II (as reported on ROPS 13-14A). Therefore, the balance available for distribution is increased by \$1,359,643 (\$1,729,726 - \$370,083), which is the difference between the amount requested to be retained and ROPS II actual expenditures on Finance approved obligations.

Finance notes that HSC section 34177 (a) (3) states that only those payments listed in the approved ROPS may be made from the funding source specified in the ROPS. However, HSC section 34177 (a) (4) goes on to state that with prior approval from the oversight board, the successor agency can make payments for enforceable obligations from sources other than those listed in the ROPS. In the future, the Agency should obtain prior oversight board approval when making payments for enforceable obligations from a funding source other than those approved by Finance.

Should a deficit occur in the future, HSC provides successor agencies with various methods to address short term cash flow issues. These may include requesting a loan from the city pursuant to HSC section 34173 (h), requesting the accumulation of reserves on the ROPS when a future balloon or uneven payment is expected, or subordinating pass-through payments pursuant to HSC section 34183 (b). The Agency should seek counsel from their oversight board to determine the solution most appropriate for their situation if a deficiency were to occur.

The Agency's OFA balance available for distribution to the affected taxing entities is \$7,876,440 (see table below).

<b>OFA Balances Available For Distribution To Taxing Entities</b>	
Available Balance per DDR:	\$ 6,323,562
Finance Adjustments	
Add:	
Requested retained balances not supported	\$ 1,552,878
<b>Total OFA available to be distributed:</b>	<b>\$ 7,876,440</b>

This is Finance's final determination of the OFA balances available for distribution to the taxing entities. HSC section 34179.6 (f) requires successor agencies to transmit to the county auditor-controller the amount of funds identified in the above table within five working days, plus any interest those sums accumulated while in the possession of the recipient. Upon submission of payment, it is requested you provide proof of payment to Finance within five business days.

Mr. Donald Parker  
April 18, 2013  
Page 3

If funds identified for transmission are in the possession of the successor agency, and if the successor agency is operated by the city or county that created the former redevelopment agency, then failure to transmit the identified funds may result in offsets to the city's or the county's sales and use tax allocation, as well as its property tax allocation. If funds identified for transmission are in the possession of another taxing entity, the successor agency is required to take diligent efforts to recover such funds. A failure to recover and remit those funds may result in offsets to the other taxing entity's sales and use tax allocation or to its property tax allocation. If funds identified for transmission are in the possession of a private entity, HSC 34179.6 (h) (1) (B) states that any remittance related to unallowable transfers to a private party may also be subject to a 10 percent penalty if not remitted within 60 days.

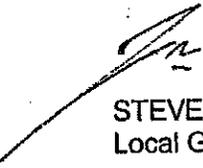
Failure to transmit the identified funds will also prevent the Agency from being able to receive a finding of completion from Finance. Without a finding of completion, the Agency will be unable to take advantage of the provisions detailed in HSC section 34191.4. Specifically, these provisions allow certain loan agreements between the former redevelopment agency (RDA) and the city, county, or city and county that created the RDA to be considered enforceable obligations. These provisions also allow certain bond proceeds to be used for the purposes in which they were sold and allows for the transfer of real property and interests into the Community Redevelopment Property Trust Fund once Finance approves the Agency's long-range property management plan.

In addition to the consequences above, willful failure to return assets that were deemed an unallowable transfer or failure to remit the funds identified above could expose certain individuals to criminal penalties under existing law.

Pursuant to HSC sections 34167.5 and 34178.8, the California State Controller's Office (Controller) has the authority to claw back assets that were inappropriately transferred to the city, county, or any other public agency. Determinations outlined in this letter do not in any way eliminate the Controller's authority.

Please direct inquiries to Evelyn Suess, Supervisor or Danielle Brandon, Analyst at (916) 445-1546.

Sincerely,



STEVE SZALAY  
Local Government Consultant

cc: Ms. Marilyn Staats, Deputy City Manager, City of Montclair  
Ms. Vanessa Doyle, Auditor Controller Manager, San Bernardino County  
California State Controller's Office

7492

Exhibit 4

Vendor: County of San Bernardino Auditor-Controller  
 Vendor No: SBCAu001 Vendor Acct No:  
Invoice Number      Date      Description  
 04232013      04/23/2013      SA-Area V Operating Fund-DDR Portion

Check Date: 04/23/2013  
 Check Amount: \$7,876,440.00  
Invoice Amount  
 7,876,440.00

WARNING: Original document has an artificial watermark on reverse side.



CITY OF  
**Montclair** *as Successor to the*  
**Redevelopment Agency**  
 5111 BENITO STREET  
 MONTCLAIR, CALIFORNIA 91763  
 (909) 628-8571

MONTCLAIR BRANCH #0984  
**WELLS FARGO BANK**  
 5120 MORENO STREET • MONTCLAIR, CA 91763

16-24  
1220

7492

VOID AFTER SIX MONTHS

Pay: \*\*\* Seven million eight hundred seventy-six thousand four hundred forty dollars and Zero cents

Date	Amount
04/23/2013	\$7,876,440.00

CITY OF MONTCLAIR REDEVELOPMENT AGENCY

To the order of:

County of San Bernardino Auditor-Controller  
 Attn: Vanessa Doyle  
 222 W. Hospitality Lane  
 San Bernardino, CA 92415-0018

*Paul M. Eaton*  
*Manilyn Atanks*

7492

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 Vendor No: SBCAu001 Vendor Acct No:  
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