MINUTES OF THE REGULAR MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY HELD ON WEDNESDAY, NOVEMBER 13, 2013, AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. PRELIMINARY MATTERS

A. Call to Order

There being a lack of a quorum, Chairman Ruh called the Committee of the Whole to order at 6:00 p.m. and asked that everyone please silence their electronic devices as a courtesy to others while the meeting is in session.

B. Roll Call

Secretary Smith noted for the record that Board Member Erickson has an excused absence for tonight's meeting.

Present: Chairman Ruh; Vice Chairperson Johnson; Board Members Catlin, Hillman, and Piotrowski; Deputy City Manager/ Economic Development Executive Director Staats; Director of Finance Parker; Secretary Smith

Absent: Board Member Erickson (excused); Board Member Richardson (arrived 6:06 p.m.)

C. Oath of Office of New Board Members

Secretary Smith administered the oath of office to newly appointed Oversight Board Member Phil Hillman and Alternate Board Member Michael Piotrowski.

Chairman Ruh thanked Board Member Hillman and Alternate Board Member Piotrowski for their willingness to serve on the Oversight Board.

II. PUBLIC COMMENT – None

III. APPROVAL OF MINUTES

A. Minutes of Regular Oversight Board Meeting of September 11, 2013

Oversight Board Counsel Kotkin advised that this item should be continued because of the lack of a quorum of Oversight Board Members this evening.

Chairman Ruh advised that this item is continued to the December 11, 2013 regular Oversight Board meeting.

IV. PUBLIC HEARINGS

A. Adoption of Resolution No. 13-13, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving and Adopting a Long-Range Property Management Plan Pursuant to Section 34191.5 of the Health and Safety Code

Board Member Richardson arrived at 6:06 p.m. and, as a result, a quorum was formed.

Deputy City Manager/Economic Development Executive Director Staats noted Oversight Board Members have been provided with an amended copy of the Long-Range Property Management Plan (LRPMP) along with a copy of Appendix Y, which relates to the change in the document.

Board Member Richardson asked if Ontario Nissan, Inc., has been apprised that after expiration of its lease options, all of the 8752 Monte Vista Avenue property not used for Gold Line right-of-way is slated for public use as the Police Department Impound Center.

Deputy City Manager/Economic Development Executive Director Staats answered, "Yes. We have had meetings with Ontario Nissan. There is another property that has a similar circumstance. Ontario Nissan leases one third of the site for automobile storage; and fortunately the economy is getting better and the dealership needs the storage space. Previously, during the Great Recession, it did not."

Deputy City Manager/Economic Development Executive Director Staats stated that an appraisal report marked "Appendix G" indicating the value of the storage area is available on the City's website for Oversight Board review.

Board Member Catlin expressed his understanding that the redevelopment dissolution law allows for properties to be designated for municipal purposes, or does staff anticipate some controversy regarding the issue.

Deputy City Manager/Economic Development Executive Director Staats concurred, stating, "It is just unusual because we have a lease with a private entity, so I am not sure what DOF will do with that."

Oversight Board Counsel Kotkin stated, "The law with respect to municipal agencies is actually termed 'governmental purpose.' It is

quite clear it is permissible that any piece of property owned by a successor agency can be retained. What is unusual here and **Ms. Staats** and **Mr. Parker** have tried their best to address—even **Mr. McEwen** in his comments with respect to redeeming some of the bonds versus all of the bonds—we are talking about a parcel that is not subdivided; however, part of it is being used for private purpose. Two thirds of it, if I understand all the material I have read and what I have heard here tonight, is being used for a strictly governmental purpose; so it is going to be very difficult for DOF to say there is no governmental purpose with respect to retention of the property. Whether they think they can bust up the property or not is, I suppose, what we will be waiting to see."

Deputy City Manager/Economic Development Executive Director Staats stated, "Exactly. Can they dictate land use to us? The property is not zoned for this purpose, by the way. It is a Specific Plan zone; so if they would require us to do that, it cannot be used for a parking lot."

Board Member Richardson asked for clarification of the term "governmental purpose."

Oversight Board Counsel Kotkin stated, "There is some statutory language right in the law. It is a 'such as' provision, so this is not an exclusive determinative list; but it says, 'such as, roads, school buildings, parks, police and fire stations, libraries, and local agency administrative buildings to the appropriate public jurisdiction pursuant to any existing agreements, etc.' Those are some of the governmental purposes that the Legislature saw fit to include. It is not an exclusive list."

Successor Agency Counsel McEwen stated, "However, I would add that DOF has so far treated it as a very exclusive list. They have denied the transfers of public parking lots, for example, to the City even though it is clearly a public parking lot because it is not a park parking lot."

Board Member Richardson stated, "That is what I was getting at with my question: Does governmental purpose mean the government is using it or there is actually some type of municipal governmental service being provided there?"

Oversight Board Counsel Kotkin stated, "The follow-through to **Mr. McEwen's** very correct comment—and I participate in these Oversight Board conference calls with attorneys from all over the state—he is correct. These parking lot issues are raging. It is really what is going on now, what is the purpose of the use if it is a parking lot. If it is parking Police vehicles like our parcel, that is going to clearly be fine. No problem, that is a governmental purpose. If it is parking so that we can keep business going in our downtown and keep our tax base where we would like it to be, that

is not being deemed a governmental purpose except in very isolated cases that I am aware of where bonds have been issued and districts have been formed and things along those lines. Your question, though, is more of a general nature. I guess what I want to say is, 'Look at what is in place right now and decide whether the purpose that the property is used for right now is a governmental purpose.' That is going to be sort of the DOF watch sign. Mr. McEwen is 100 percent correct: It is not about what you plant. It is about what is going on."

Board Member Richardson stated, "With regard to the Family Resource Center, for example, it seems as though that may kind of conflict with the statute."

Oversight Board Counsel Kotkin stated, "I would suggest that your staff has given you an articulable perspective. They very clearly told you, 'This is what we are doing now. This is happening now.' You heard your City Council representative and your school district representative chime in very loudly, 'We are very proud of these programs. These are government programs, public programs benefiting the community.' I do think you are right to raise the issue as not being listed on the list, but I also think that this legislation is new and it is a moving target. For this Board to take action tonight is imperative, obviously. We have got a deadline coming tomorrow, and your staff has given you perspective. If you disagree, that is certainly your prerogative; but the flipside of that is I do not think you are out twisting in the wind. Your staff has told you what they think the governmental purpose is."

Board Member Richardson stated, "Right. I did not mean to seem as though I were disagreeing with staff at all."

Oversight Board Counsel Kotkin stated, "No, it did not seem that way."

Board Member Richardson stated, "It seemed as though 'governmental purpose' was open-ended, and we all know the term could be described many different ways, such as eminent domain and many other things as to how they have been used."

Oversight Board Counsel Kotkin stated, "I guess what I tried to do, and I really appreciate **Mr. McEwen's** correct comment about the parking lots, it is in the eye of the beholder. If you call it a parking lot, and that is a good example because there have been concrete rejections by DOF that he and I are both aware of, but it is not the kind of parking lot that the City is allowing City employees to park their vehicles or the Police Department to impound vehicles or something like that. That is going to be twisting in the wind based on DOF action. These actions that staff is recommending, I am not personally aware of precedents where similar programs or facilities

that are in place have been turned down by DOF. If **Mr. McEwen** is, I would welcome his comments, but I am not aware of that."

Successor Agency Counsel McEwen stated, "The other thing to keep in mind, too, is that where DOF has been taking a hard line on the provision of what a governmental use is has not been necessarily in the context of a LRPMP. They may actually come to a different conclusion on some of these things as a result of the explanations, and this is an extremely thorough explanation of the use. I think that is well worth trying to—I mean, you have certainly made it clear it is a community benefit, so why would you give that up voluntarily without fighting the fight with DOF first?"

Oversight Board Counsel Kotkin stated, "I also heard staff very carefully tell you with respect to those northern parcels, the Transcenter and Nissan/Police facility. You have Gold Line issues up there; there may already be easements. I do not know whether the Gold Line Authority has gone that far. The bottom line is: As **Mr. McEwen** says, this is a relatively new portion of the dissolution process. You are right there in the thick of it with other agencies approving or considering and ultimately, we hope, approving these LRPMPs. You are not twisting in the wind on any of this if you agree with what your staff has said. You did have a late hour addition to the plan, but I know that staff and **Ms. Staats** was very careful to point out it has been put into your packets. It has been made available to the public is my understanding. In real time, as soon as staff became aware, certainly it is available to you; and as a practical matter, we need to take action on it based on staff's recommendations. There may be some loose ends, and DOF and the Successor Agency will ultimately shake those things out. As Oversight Board Counsel, I do not want to think about what happens if we do not approve a plan tonight. There is a hard six-month deadline from our finding of completion, and that ends tomorrow."

Deputy City Manager/Economic Development Executive Director Staats stated, "One of the reasons this took a little bit longer is another item on the agenda, is because DOF would not approve the Agreement with the appraiser; and the appraiser was reluctant to give me the information without believing they were going to get paid."

Oversight Board Counsel Kotkin stated, "I have not been paid, either; but I am here on faith."

Chairman Ruh declared it the time and place set for a public hearing related to adoption of Resolution No. 13-13 approving and adopting a Long-Range Property Management Plan pursuant to Section 34191.5 of the Health and Safety Code and invited comments from the public.

There being no one in the audience wishing to speak, Chairman Ruh closed the public hearing and returned the matter to the Oversight Board for its consideration.

Board Member Hillman thanked staff for the excellent report.

Moved by Vice Chairperson Johnson and seconded by Board Member Catlin that Resolution No. 13-13, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving a Long-Range Property Management Plan Pursuant to Section 34191.5 of the California Health and Safety Code,"** be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-13 was adopted by the following vote:

AYES:	Richardson, Piotrowski, Hillman, Catlin, Johnson, Ruh
NOES:	None
ABSTAIN:	None
ABSENT:	Erickson

V. BUSINESS ITEMS

A. Adoption of Resolution No. 13-11 Replacing Resolution No. 13-06 and Approving *Agreement No. 13-89* Replacing *Agreement No. 13-59*, an *Engagement Agreement* Between the Successor Agency to the City of Montclair Redevelopment Agency and Edward Z. Kotkin, for Mr. Kotkin to Act as Counsel to the Oversight Board

Oversight Board Counsel Kotkin advised that he has a financial interest in this matter and would be unable to participate in discussion thereof on any level. He stated that he would be happy to answer any questions.

Board Member Richardson asked if there were any other revisions to the proposed contract other than including a term of August 15, 2013, through July 1, 2016, and a fee limit of $36,000.

Director of Finance Parker stated, "No, just inclusion of a contract start date and termination date and a maximum not-to-exceed amount."

Board Member Richardson thanked Director of Finance Parker.

Board Member Catlin asked if the $36,000 fee limit is for the duration of the contract or for an annual basis.

Director of Finance Parker answered, "It is an annual not-to-exceed amount."

Moved by Board Member Richardson and seconded by Vice Chairperson Johnson that Resolution No. 13-11, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Replacing Resolution No. 13-06 and Approving *Agreement No. 13-89* Replacing *Agreement No. 13-59*, an *Engagement Agreement* Between the Successor Agency to the City of Montclair Redevelopment Agency and Edward Z. Kotkin, for Mr. Kotkin to Act as Counsel to the Oversight Board,"** be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-11 was adopted by the following vote:

AYES: Richardson, Piotrowski, Hillman, Catlin, Johnson, Ruh
NOES: None
ABSTAIN: None
ABSENT: Erickson

B. Adoption of Resolution No. 13-12 Replacing Resolution No. 13-07 and Approving *Agreement No. 13-90* Replacing *Agreement No. 13-67*, a Proposal for Appraisal Services Between the Successor Agency to the City of Montclair Redevelopment Agency and Integra Realty Resources, for Integra Realty Resources to Perform Real Property Appraisals Associated With Completion of a Long-Range Property Management Plan

Moved by Board Member Catlin and seconded by Board Member Hillman that Resolution No. 13-12, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Replacing Resolution No. 13-07 and Approving *Agreement No. 13-90* Replacing *Agreement No. 13-67*, a Proposal for Appraisal Services Between the Successor Agency to the City of Montclair Redevelopment Agency and Integra Realty Resources, for Integra Realty Resources to Perform Real Property Appraisals Associated With Completion of a Long-Range Property Management Plan,"** be read by number and title only, further reading be waived, and it be declared adopted.

The Oversight Board waived the reading of the Resolution.

Resolution No. 13-12 was adopted by the following vote:

AYES: Richardson, Piotrowski, Hillman, Catlin, Johnson, Ruh
NOES: None
ABSTAIN: None
ABSENT: Erickson

C. Oral Report on Status of Meet and Confer Regarding Recognized Obligation Payment Schedule 13-14B

Director of Finance Parker noted the Oversight Board previously approved Recognized Obligation Payment Schedule (ROPS) 13-14B and stated that, as usual, every six months DOF changes the ROPS format. He noted ROPS 13-14B was submitted using the new format requiring the fund balance amounts including the full amount of bond year debt service as stipulated by Oversight Board Counsel. In addition, he noted DOF was informed there was an approved Administrative Budget and that staff would be applying the remainder of the reserves on hand, estimated to be about $129,000, toward the bond debt service, thereby reducing it to an amount that would be realistic going forward. He stated, "DOF immediately took the position that the bond debt service being claimed was more than was needed and the second half of the year should be removed and put into the second half and not all claimed up front, which, in our opinion is a violation of the pledge of those bonds, and then indicated that we were absolutely limited to $250,000 in the Administrative Budget, which was DOF's opinion. There is nothing in the law that says there is a cap on administrative costs in total. In fact, the law even says that reserves can be paid in addition to the administrative allowance received. [DOF] promptly determined that $250,000 was our absolute cap on the administrative costs that could be incurred regardless of what the Oversight Board approved and that the $129,000 that we were going to apply from our reserves we had on hand should, instead, be applied toward bonds. That is an estimated number, that is not an absolute. We are projecting what is going to be there in six months. I do not know absolutely it will be there.

"We had a Meet and Confer on that. In process of preparing for the Meet and Confer, DOF guidance had come out a week after we filed our ROPS indicating that costs associated with preparation of the LRPMP were not part of the administrative allowance. They could be claimed directly as payments from the Redevelopment Property Tax Trust Fund (RPTTF). Also, we had been claiming and it had been allowed that costs associated with bond administration could also be claimed directly. In the Meet and Confer, we said, 'We want $83,000 of our costs that we have claimed as administrative—not knowing any better because you provided no guidance on that until after this was filed—to be reclassified over to our RPTTF. In the Meet and Confer process originally, they took our discussion of the bonds and said, 'We are conceding that. We do not even have to talk about it.' We then had the discussion about the administrative costs, and they said, 'OK, we will think about it.' As to reclassifying those costs, they said, 'You cannot do that in a Meet and Confer.' We said, 'Wait a minute—you get the guidance out after we file our report, after you make a determination, and now we cannot change it?' Now they are having that under advisement as to whether or

not they are going to allow that because it is not part of the Meet and Confer process.

"They make up these rules as they go along, and it seems we do not really have a handle on what they are doing. As to the application on the reserves, they are also taking that under advisement. Supposedly, we will have a final determination by November 17, 2013. We have not heard anything more on either one of those reports. That is presently the status. We are still trying to get the administrative costs allowed, which they should be.

"They originally said the bonds were no problem. Then I received a call saying, 'We have reconsidered that. They are a problem again; we need more information.' We had to go through another Meet and Confer on the bond points. At that point, I was involved and **Mr. McEwen** was involved telling them, 'This is ridiculous. Here are your sections that say this flow should occur.' Everything on that is still under consideration right now; we have not heard. **Mr. McEwen** has opined that should that not be allowed, it is a technical default on those bond issues; and we have to go accordingly. We are still fighting all those points with them."

Board Member Richardson asked if the administrative costs are either $250,000 or a certain percentage of the RPTTF.

Director of Finance Parker answered, "That is for the administrative allowance. The administrative allowance that is allowed from our RPTTF is the higher of 3 percent of the amount of obligations you get paid or $250,000, whichever is larger. Since we are one of those agencies that did not have substantial bonding, that is, returning more money to the taxing entities as a result of low debt service, we will never get more than $250,000 in that computation. In that same section of the law, there was a clause that said, 'Administrative costs could be paid from reserves without consideration of that allowance.' You could pay from reserves additional administrative costs without regard to that allowance computation in the same section of the Government Code that specifies the allowance. There was also another section of the Government Code that says, 'The city can advance money to the agency to pay administrative costs (which we have here in a Administrative Reimbursement Agreement) and that any costs so advanced would be deemed to be a separate enforceable obligation and not part of the administrative costs. Nowhere in any of those sections do they say there is an absolute cap on administrative costs; nowhere did they say any of these costs could not be advanced in excess of that amount. It has just been DOF's determination that the $250,000 is an absolute for us. Nowhere in the Government Code does it specify an absolute cap on administrative costs in total."

VI. COMMUNICATIONS

A. Staff – None

B. Chairman and Members

1. Vice Chairperson Johnson welcomed Board Member Hillman and Alternate Board Member Piotrowski to the Oversight Board.

2. Chairman Ruh commented that Oversight Board meetings are typically short, stating, "Tonight is an exception. We do try to run them as efficiently as we can because we know your time is busy, especially on a weeknight when you want to get back to your families and other activities."

VII. ADJOURNMENT

At 7:07 p.m., Chairman Ruh adjourned the Oversight Board of Directors.

Submitted for Oversight Board approval,

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Yvonne L. Smith
Secretary