MINUTES OF THE SPECIAL MEETING OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY HELD ON WEDNESDAY, FEBRUARY 26, 2014, AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. PRELIMINARY MATTERS

A. Call to Order

Chairman Ruh called the meeting 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, Piotrowski, and Richardson; Deputy City Manager/Economic Development Executive Director Staats; Director of Finance Parker; Secretary Smith

Absent: Board Member Erickson (excused)

II. PUBLIC COMMENT – None

III. APPROVAL OF MINUTES

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

Moved by Board Member Richardson, seconded by Board Member Piotrowski, and carried to approve the minutes of the September 11, 2013 regular Oversight Board meeting.

B. Minutes of Regular Oversight Board Meeting of November 13, 2013

Moved by Board Member Hillman, seconded by Board Member Piotrowski, and carried to approve the minutes of the November 13, 2013 regular Oversight Board meeting.

IV. BUSINESS ITEMS

A. Adoption of Resolution No. 14-01, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Amending the Budget of the Successor

Agency to the City of Montclair Redevelopment Agency for January 1, 2014, Through June 30, 2014, Pursuant to Health and Safety Code Section 34177(j) and Authorizing Its Transmittal to the Department of Finance

Board Member Catlin received clarification related to reclassifying administrative costs for preparation of the Long-Range Property Management Plan (LRPMP) and for preparation of financial reporting required by bond indentures for them to be considered enforceable obligations.

Moved by Board Member Catlin and seconded by Vice Chairperson Johnson that Resolution No. 14-01, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Amending the Administrative Budget of the Successor Agency to the City of Montclair Redevelopment Agency for January 1, 2014, Through June 30, 2014, Pursuant to California Health and Safety Code Section 34177(j) and Authorizing Its Transmittal to the Department of Finance,"** 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. 14-01 was adopted by the following vote:

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

B. Adoption of Resolution No. 14-02, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving a Recognized Obligation Payment Schedule for July 1, 2014, Through December 31, 2014, Pursuant to California Health and Safety Code Section 34179, Division 24, Part 1.85, and Authorizing Posting and Transmittal Thereof

Director of Finance Parker advised that the Oversight Board has been provided with a revised Recognized Obligation Payment Schedule (ROPS) that includes a change that needed to be made today.

Board Member Richardson asked if computing administrative costs is on an hourly basis.

Director of Finance Parker stated that it involves taking a percentage allocation of Deputy City Manager/Economic Development Executive Director Staats' work hours involved in preparing the

LRPMP, which is estimated to be roughly 60 to 70 percent of her time.

Discussion took place related to **Assembly Bill 471,** signed into law as urgency legislation on February 18, 2014, which specified that Housing Authorities could receive a housing administrative cost allowance, presumably because otherwise, they would have insufficient funds to operate.

Board Member Hillman received clarification that considering this item prior to Section IV, "Business Items," Item D would not make a procedural difference because the Successor Agency would actually be filing the litigation. He indicated that the action proposed in Item D does not legally require Oversight Board approval; it is simply being presented for Oversight Board review and consideration out of an abundance of caution.

Board Member Hillman asked if the Department of Finance would attempt to disallow the proposed expenditure.

Director of Finance Parker stated, "Supposedly, DOF is blessing these types of items pretty regularly. The law does specify that an enforceable obligation is valid for litigation, even if it is against DOF."

Oversight Board Counsel Kotkin stated, "The only alternate procedure you could undertake if you wished as a formality is to defer a vote on the ROPS Resolution, take up the other item, and have it be contingent upon approval of the ROPS. I see your point, **Mr. Hillman.** What you are effectively saying is if these ROPS are not approved, there is no money regardless of whether we have the authority on litigation. We are the gatekeepers with respect to these funds in this enforceable obligation schedule. I get your point. I do agree with **Mr. Parker.** I am not sure it matters a whole lot."

Board Member Hillman indicated he would be comfortable considering this item now.

Oversight Board Counsel Kotkin indicated he is comfortable with it as is Special Agency Counsel McEwen, from what he gathers.

Moved by Vice Chairperson Johnson and seconded by Board Member Hillman that Resolution No. 14-02, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving a Recognized Obligation Payment Schedule for July 1, 2014, Through December 1, 2014, Pursuant to Section 34179, Division 24, Part 1.85, and Authorizing Posting and Transmittal Thereof,"** 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. 14-02 was adopted by the following vote:

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

C. Adoption of Resolution No. 14-03, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency's Proposed Administrative Budget for July 1, 2014, Through December 31, 2014, Pursuant to Health and Safety Code Section 34177(j)

Chairman Ruh asked if the allocations of staff time are defensible.

Director of Finance Parker answered, "Yes, they are based upon roughly the amount of time we would estimate it would take to perform these duties. If, in fact, the hours actually total less, we will adjust those hours. Usually, we come in higher than that amount; and so, therefore, these are the amounts we are willing to absorb."

Moved by Board Member Catlin and seconded by Board Member Piotrowski that Resolution No. 14-03, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency's Proposed Administrative Budget for July 1, 2014, Through December 31, 2014, Pursuant to Health and Safety Code Section 34177(j),"** 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. 14-03 was adopted by the following vote:

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

D. Adoption of Resolution No. 14-04, a Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency to the City of Montclair Redevelopment Agency's Action to Seek Legal Counsel for the Purpose of Pursuing Legal Action Against the Department of Finance

Board Member Hillman commented that it certainly is disconcerting, to say the least, that staff must resort to such drastic measures to recover the $150,000 of the City's out of pocket expenses.

Vice Chairperson Johnson inquired as follows:

1. Have other cities been forced to file litigation against DOF?

   Director of Finance Parker answered, "They have not had to do so for the administrative function. We are one of the first to go forward with a lawsuit. Right now, I believe, there are over 150 lawsuits by successor agencies against DOF." He noted the number is interesting considering there are only a total of 400 redevelopment agencies in California.

2. Have any of the cities prevailed?

   Director of Finance Parker indicated that some of the lawsuits have prevailed "though a lot of them have not. Obviously, the law is somewhat stacked against cities because the lawsuits are tried by only four judges in Sacramento courts. Recently, the DOF has lost two major cases on the claw-back provision in which agencies tried to get money back from when they were still in existence. The courts ruled that DOF's actions violated **Proposition 22.**

Vice Chairperson Johnson thanked Director of Finance Parker for the information.

Board Member Richardson inquired as to the need from the Oversight Board's standpoint for approval of this item.

Oversight Board Counsel Kotkin stated, "I think **Mr. Parker** has already addressed that pretty clearly. I will try to put it in extremely direct terms. Realistically speaking, you are not the plaintiff. The Successor Agency has made a decision to go after this issue. What I will say is that as I said with respect to the line item of the ROPS, you are the gatekeeper as to the ROPS. Those ROPS are not going to DOF without your stamp of approval on them. The ROPS themselves specifically cover the funding for this litigation. It is not that you have any obligation or even authority, as **Mr. Parker** said, to say whether "Yea" or "Nay" the Successor Agency should sue; but it is going to be difficult for them to be funded in their effort without your approval on the ROPS. So if, in a hypothetical sense, you did not feel comfortable with this agenda item, we would probably go back and amend the ROPS approval as you wish to send it up to Sacramento to reflect that decision by the Board; but at that point, the Board would be squaring off in an adverse position to a determination by the Successor Agency. They do not need your authority to file the lawsuit—absolutely none is here. The flipside is you do control those particular dollars that are solicited and ultimately allocated to this Board through the new redevelopment process.

Board Member Richardson commented that the Oversight Board has very little control over DOF.

Oversight Board Counsel Kotkin stated, "You will be approving a schedule; and if it is on the schedule, it is eligible for funding. It is all subject to the discretion of DOF."

Board Member Richardson indicated that he does not see the need to take a separate action on this item.

Oversight Board Counsel Kotkin stated, "I think **Mr. Parker's** approach is actually quite circumspect. I was not asked, I was not consulted, because actually I do not represent the Successor Agency. But I do not mind giving you as your attorney the legal advice that it seems the Successor Agency is very circumspect. They are trying to make sure that if dollars are being spent that you, the Oversight Board, who, again, is the entity to approve that schedule, the ROPS, that you just approved, that you are comfortable with the decision itself. Does that make sense? Your staff is trying to make sure that DOF does not suggest at some later point in time, 'Well, how do we know how the Oversight Board felt about any of this?'"

Director of Finance Parker stated, "Yes, that is exactly the point we are trying to make. I am an Oversight Board member for the Brea Redevelopment Agency and, basically, they have been in litigation three times against DOF; and not once has it come to the Oversight Board to be determined. The law specifically allows litigation costs; so therefore, while the Board could say, 'Remove this from the ROPS,' then I think it is a whole different position between the Oversight Board and the Successor Agency. Now they are in legal conflict over the whole situation. We were just trying, out of an abundance of caution, to say, again, 'Oversight Board, here is what we are doing,' get approval, and thereby eliminate one of DOF's pencil-pushing-type moves to say, 'Well, you did not go through the Oversight Board, so now we are going to bounce this.' That is strictly it, but I think litigation could proceed without Oversight Board approval."

Oversight Board Counsel Kotkin stated, "If you look at the actual Resolution, **Mr. Richardson,** you are not authorizing, you are approving the Successor Agency action that has already been taken. That is Section 3 of the Resolution."

Director of Finance Parker added, "And, basically all you are approving is a retention of legal counsel. That is it. The action of actually pursuing litigation has been approved by the Successor Agency."

Board Member Richardson stated that the "Reason for Consideration" section of the agenda report "does not quite read like that." He read the section, which is listed below and entered into the record as follows:

REASON FOR CONSIDERATION: *The Oversight Board is requested to consider approval of the Successor Agency's action to engage legal counsel to handle litigation against the California Department of Finance and authorization to include such costs on the current and future Recognized Obligation Payment Schedules.*

Oversight Board Counsel Kotkin stated, "They do not, strictly speaking, need it. It is more of a ratification. Your point is well taken, and I think **Mr. Parker** agrees with you as well.

Vice Chairperson Johnson stated, "It seems to be we are just trying to get all our ducks in a row—not just in a row but singing in three-part harmony."

Oversight Board Counsel Kotkin stated, "In effect, and I do not want to speak for the Successor Agency because I do not represent it, if it is going forward—they do not even know if they are. **Mr. Parker** made it clear to you just a few minutes ago that if the $79,000 that they are trying to, essentially, cover in this new ROPS schedule is approved, they may, in an exercise of discretion, determine that the legal costs, and I think this goes back to **Mr. Hillman's** comment, are not necessarily worth incurring. Whether they think they are right or wrong, they may not want to spend the money on an attorney if they get that $79,000. And **Mr. Parker** is smiling, so I must be right."

Director of Finance Parker stated, "Well, I always think I am right; and usually when I talk to DOF, I come out wrong, unfortunately. Yes, if it comes to that point, you are absolutely right. If we were able to finally convince them that, yes, that amount is due and get that $79,000, that reduces our potential for loss and at that point it may not be feasible to sue them just for a point of order to go forward with it."

Board Member Catlin asked Board Member Richardson if he would feel more comfortable if the motion were changed to something such as: "We recognize that such a litigation cost is a valid expense or recognized obligation," and not necessarily that we engage in litigation necessarily or go along those lines. Would that satisfy the City's interest?

Director of Finance Parker stated, "Well, basically what we are asking you to do is adopt a Resolution. All actions have to be done by Resolution, and that is the one that is specified here. If we were to modify that, the amended Resolution would have to be brought back to the Oversight Board at a future meeting. All actions have to be done by Resolution, and then we have to submit that Resolution to DOF for its approval of it."

Oversight Board Counsel Kotkin stated, "If I understand **Mr. Catlin's** comment, he was suggesting maybe we could modify the verbiage in the actual Resolution to conform to **Mr. Richardson's** concerns of not requiring any further action. And I am happy to take a shot at that if I understand your meaning with respect to your concern. It really boils down, if I heard you correctly, **Mr. Richardson,** to the notion that you are not approving it because you do not have the authority necessarily to approve it. You are just, as **Mr. Catlin** said, you are comfortable that it is an acceptable conforming-with-statute expenditure under the redevelopment law as it has been restated in AB 126 and AB 1484 and that it is appropriately placed on the ROPS; and if they want to pursue it, it is funded."

Board Member Richardson stated that such would be part of his follow-up questions. He asked if it is Oversight Board Counsel's opinion that, legally, if he sees that $80,000 in litigation costs is a justifiable expenditure.

Oversight Board Counsel Kotkin stated, "I would rather not give you that type of legal counsel in Open Session. I will if that is the Board's wish; I work for you. But as a practical matter, if you are asking me to reevaluate the issue that the Successor Agency examined in Closed Session with its attorney, there is a reason they did that in Closed Session. That would be my recommendation in Open Session would be if you have that concern, we would do it in Closed Session. The only problem is we have to get the ROPS done; and I think the whole point of this agenda item is to have it concurrent with the ROPS as opposed to subsequent. So if you are at all uncomfortable with the $80,000, you could do one of two things. You could certainly ask me for my opinion and I will give it to you; but the flipside of that is you could kick this particular agenda item down the road and do a special meeting at which I talk to you about it in Closed Session if you did not want me to opine in Open Session for you to have that sort of independent set of eyes. I do not know, frankly, **Mr. Richardson,** given the lack of real authority that you have correctly identified and **Mr. Parker** stated pretty accurately that there is a real percentage in it for this Board because they are going to do what they are going to do unless you knock the item off the ROPS. If you knock the item off the ROPS, that does create that conflict, which is why you have your own attorney and they have their own attorney. But right now, you do not even know if I agree with that. I may, and I am telling I would prefer not to do that in Open Session.

Board Member Richardson stated, "Personally, part of bringing **Mr. Kotkin** on was to get this type of counsel in regard to these issues. I think it would be of value to get his opinion of this."

Oversight Board Counsel Kotkin stated, "And I am perfectly capable of forming that. The other downside is I would be shooting a little bit from the hip."

Board Member Richardson stated, "I think that is going on statewide because this is kind of new."

Oversight Board Counsel Kotkin stated, "I want to tell you, and I do not mind being very candid here as you are my client, I had not prepared to render a legal opinion on the decision that the Successor Agency made only because I did not see that coming. I would be happy to take a stab at it if you insist, but my preference if you really want that counsel is to have a special meeting that we would set today. You do not even have to set a special meeting. You could adjourn to a separate date. That date could be as imminent as tomorrow if you wanted, and we could come back and talk about it a little bit in Closed Session. You would get my legal analysis, and you would be able to form an opinion. If we wanted to reword the Resolution, we could certainly do that. I am not looking to make work for myself, so I want to be very clear about that."

Board Member Richardson stated, "What I see is, obviously, there is potential for litigation that could be happening. We are being asked to take a position on something that, frankly, I am not sure about. From what I understand, we are not legally required to approve the item; but I shared my concerns."

Oversight Board Counsel Kotkin stated, "Yes, you have been clear; and I have tried to be equally clear with respect to this Board's role in the process."

Chairman Ruh asked if there is a wish of the Oversight Board of a course of action. He noted the Board has the option of continuing this item to another meeting.

Board Member Richardson inquired as to the due date for the ROPS.

Deputy City Manager/Economic Development Executive Director Staats answered, "March 1, 2014."

Director of Finance Parker stated, "March 1 is when it is due. I would just like to perhaps reemphasize the situation. When you look at the Resolution, you are not approving the litigation. You are approving retaining the firm to support the litigation that the Successor Agency has authorized. That is all. It is approving a contractual agreement for the firm is all, and all contracts have to be approved by the Oversight Board. That is one of the reasons we are going through this. Regarding the Oversight Board I serve on, the Successor Agency has not done that. We are also citing Section 34171(d)(1)(f) that basically states that agreements concerning litigation expenses are valid enforceable obligations. Basically, it could be reviewed further."

Board Member Richardson stated, "If that item was removed from the ROPS, would the City still be taking the position with engaging the firm?"

Director of Finance Parker stated, "I cannot speak for the Successor Agency. My own personal opinion would be yes, to still seek that situation; and I think at that point, that puts the Successor Agency in conflict with the Oversight Board because the law specifically allows it. Again, that would be a decision the Successor Agency Board would have to make."

Deputy City Manager/Economic Development Executive Director Staats asked if it would help if Section 3 of the Resolution stated, "The Oversight Board just approves the contractual agreement." She noted what is really being asked is for Oversight Board approval of the agreement because it was the City's understanding that engaging a contractual agreement required it.

Oversight Board Counsel Kotkin stated, **"Ms. Staats** is right. I guess it was not so much an abstraction."

Board Member Catlin stated, "My understanding is, I do not think we need to get involved with the agreement, whether it is acceptable or not. It is the expense of this type of litigation—is that legitimate. **Mr. Richardson,** is your concern more about the validity of the litigation or about the dollar numbers?"

Board Member Richardson stated, "It is not the validity of the litigation; it is the validity of the expense that we are approving."

Board Member Catlin stated, "If I understood correctly, litigation expense is an acceptable enforceable obligation."

Oversight Board Counsel Kotkin stated, "Most definitely. You are allowed to approve litigation expenses. It is statutory. The point you are making, it has been said and I think you said it, **Mr. Richardson,** and **Mr. Parker** sort of echoed it, that is one of the reasons you have an independent attorney who represents you and not the Successor Agency is, they have made a decision already. They can do whatever they want. As a practical matter, you have a role in this statutory process. You have already, in this particular case, fulfilled that role with respect to the ROPS. The ROPS is now approved as presented. If, in fact, this Board decided that it did not want to approve that expenditure, the time to revisit that would certainly be tonight because realistically speaking, if you do not revisit that tonight, staff can and should get right to the business of sending the schedule to Sacramento to the DOF. And they will do that."

Chairman Ruh stated, "Is there a desire of the Board for a specific course of action tonight? Does the Board want to amend the language? We have several options in front of us: amend the language, adjourn to a Closed Session at a date and time to be set, or approve the item this evening."

Vice Chairperson Johnson noted she has a clarifying question, which she wanted to ask in plain terms. She stated, "As I understand it, the question before us is: Do we think that we should support the Successor Agency in spending what it needs to spend to collect the money that it needs to spend. That is for the City of Montclair; and I think in any other arena in life, you have to spend something to get what you need to get back. I do not believe DOF is going to just smile and graciously say, 'Oh, yes, sure, no problem.' Am I stating it too simply? Is that what we are doing?"

Director of Finance Parker stated, "Part of that process may be that simple. There have been some situations in litigations like the Oversight Board in Brea on which I serve in which they went to litigation, the Attorney General got involved, they quickly came through with a stipulated judgment, and it was over and done with. There was no long prolonged legal fight or battle with regard to it. It may be that simple; it may not be. It may go on for years in this scenario. Not every action may be delayed, delayed, and delayed by the courts. We are coming through with an estimate of what legal counsel says if you went to the nth degree with this thing, went to court, filed all the briefs and everything else, his estimate would be $70,000. Initially, to start the process which we are claiming now is $10,000 for this scenario."

Vice Chairperson Johnson noted the second part of her question is: What detrimental thing could happen if we do not agree to this?

Director of Finance Parker stated, "If you do not agree with this, then basically, we could go without this item if you agree to take it off the ROPS. We would have to change the ROPS to submit it and file it. At that point, the Successor Agency has what could still, as **Mr. Kotkin** points out, go forward on their own from that standpoint with the idea then saying that basically, the Oversight Board could be blocking their getting reimbursement under the statutory remedy as **Mr. Kotkin** pointed out."

Deputy City Manager/Economic Development Executive Director Staats stated, "One of the issues staff has encountered with DOF prior to this item and which sort of led up to this item is the fact that on all of our previous ROPS, and I am not aware of any other agency although there may have been some that were denied bond costs. We were denied bond counsel costs as part of the RPTTF, we were denied anything—all legitimate costs that went on the RPTTF. In the past, DOF denied those all for us and made them take those out of our administrative costs; and we had the money in reserves

at the time because we had not had to pay the remaining funds we have and that is where that money came from. It did not come from the taxing agencies' RPTTF. It is all going to balance out in the end, but we had the ability to pay those things when DOF denied it. I know in Rancho Cucamonga those same bond costs and things were not denied, and I know in other agencies they were not denied. It is the arbitrariness of DOF. In particularly looking at our situation that had us frustrated, and this last item in terms of issuing an opinion about what we could put on the RPTTF and then saying, 'No, you cannot have the money,' you are right. Relatively, it is a very insignificant amount of money that we are talking about; but I think it is almost to the point that we should get back those administrative costs. You even said we could claim them, and now you are saying we cannot."

Board Member Piotrowski stated, **"Mr. Richardson,** when you spoke about the 'Reason for Consideration,' I have been reading and rereading it; and I do not have any heartburn the way it is stated because I interpret the action to engage as our giving permission for them to enter into a contract, an action to engage the lawyer. This is all we are approving is just their right to enter into a contract, which could be reimbursed by the ROPS."

Board Member Catlin stated, "I would just like to get back to your earlier question, Mr. Chairman. I am OK with moving forward with the item with some wordsmithing from our Counsel if that will help my colleagues accept what is presented before us. I am OK with the idea of litigation costs. It seems as though, because of what **Ms. Staats** said, we have had a lot of frustrations with DOF. They make arbitrary rulings after informing staff of one thing and then turning around and doing something opposite. I do not know if there is any other remedy to try to force their hand. And I am also willing to come back tomorrow night or some other night if that results in my colleagues being more comfortable with the item too, so I am open either way."

Board Member Hillman stated, "I just wanted to clarify or ask a clarifying question, **Mr. Richardson**; and I am working through this as well. Is the concern—because the Successor Agency has already contracted or hired Best Best & Krieger for this or they had approved hiring the firm back in January—is the concern the Board's approving their contract or is the concern more if the $80,000 is the Successor Agency's responsibility to do that? I am wrestling a little bit with it, and I am trying to get to the issues."

Board Member Richardson stated, "It has been awhile ago, but if I remember some of the properties on the LRPMP actually which we have contested that should not be on there—the low-income housing—there were some contracts that came up for that before."

Director of Finance Parker stated, "Yes, and that has finally been approved."

Board Member Richardson stated, "There was some money, some maintenance contracts that came up for those. Wasn't there some people to do some bond work and gardening that came up before?"

Director of Finance Parker stated, "We did have that. That was challenged on one of our ROPS, yes."

Board Member Richardson stated, "That was being included on the ROPS, but I do not remember actually doing a specific item including that contract because I know that new contracts that the Successor Agency…"

Deputy City Manager/Economic Development Executive Director Staats stated, "They were existing contracts. They had existed…"

Director of Finance Parker interjected, "Those were existing ones prior to the elimination of redevelopment, so we did not have to do those. But the way the law works, any new contracts do have to be approved by the Oversight Board technically. So that would be a contractual arrangement."

Board Member Richardson stated, "But they would have to be approved by separate item or included on the ROPS?"

Director of Finance Parker stated, "They have to be approved by a separate Resolution and an item just like, for example, **Mr. Kotkin's** contract that we had, appraisal contracts that we did; and they have to go by Resolution up to DOF. And as **Mr. Kotkin** pointed out, we went around and around with his contract having to have it twice come back to the Oversight Board because DOF bounced that contract."

Board Member Richardson stated, "But that was with the Oversight Board, right? Wasn't **Kotkin's** contract with the Successor Agency?"

Director of Finance Parker stated, "Well, **Mr. Kotkin's** contract is with the Successor Agency to provide services to the Oversight Board."

Deputy City Manager/Economic Development Executive Director Staats stated, "Yes, the Successor Agency had to approve **Mr. Kotkin's** contract because as our Counsel said, the contract did require the approval of the Successor Agency. It did to go to them as well. Each time, it had to be changed because of what DOF objected to."

Mr. Kotkin stated, "I will say in public because I do not think it is even remotely controversial, DOF has issued some very challenging

decisions that make life for a successor agency trying to present items to a successor agency's oversight board very challenging. It is kind of a moving target, and I completely understand where you are coming from, **Mr. Richardson**, to the extent that I have expressed it here tonight. You do have options as your Chair has indicated. I heard Mr. Catlin make comments, and really what it boils down to is it is a completely legitimate expenditure under the law. The question for you as the gatekeeper on the ROPS is do you want to see it on the ROPS because if you do not, you are not changing their authorization to go ahead and sue DOF. They have the authority to do that. They would have to come up with money from some other source; it could not be from the increment."

Board Member Richardson stated, "My concern, for instance, is not necessarily that the contract is being brought forward because similarly if you had to go and do maintenance and engage in a new contract for some of those properties and you brought that contract forward, I understand that. If new contracts come forward, the Oversight Board needs to approve them. But it is to the extent that it appears or may seem as though we are taking a position on the merits of that potential litigation, which…"

Mr. Kotkin stated, "Well, let me just say this: You are not even being asked to; however, and this is to your point, there is an element of bootstrap or sort of two things happening at once that you have seized on; and realistically speaking, the Oversight Board is not the Successor Agency. The Successor Agency is not the Oversight Board. There is a lot of reasons in the statutes that we are dealing with here tonight that I could cite to you that you should not get in the way. There are other reasons that I would argue you have the authority and, depending on your discretion, the right to do anything you darn well please because the ROPS need your approval. So you are an independent entity, and what I know I heard **Mr. Parker** say is that your decision is not going to be determined as to whether they go forward with this litigation or not."

Board Member Richardson stated, "I will just say that I am comfortable approving the item to the extent that we are approving the contract like we would any other contract. But to the extent just to be speaking to the merits of the case or litigation…"

Mr. Kotkin stated, "At this point the record is crystalline that not only you but perhaps other Board Members as well, you are not taking a position on the merits of the litigation Now can you take a position? I guess you could."

Board Member Richardson stated, "We may have to."

Mr. Kotkin stated, "And realistically, that is up to the Board. But you are not being asked to, you do not need to in order to approve this agenda item. I think that is what **Mr. Catlin** was trying to say."

Board Member Catlin stated, **"Mr. Richardson,** is there any language —I know you pointed out the language in the first part of the agenda report—is it just the Resolution that is going to DOF?"

Director of Finance Parker stated, "Yes, just the Resolution will go. The agenda report is just for your information."

Board Member Catlin stated, "Is there any language in the Resolution that causes heartburn at all regarding position?"

Board Member Richardson stated, "I think what **Ms. Staats** pointed out in Section 3, "approves the actions of the Successor Agency."

Deputy City Manager/Economic Development Executive Director Staats stated, "If you just remove that and just put: 'The Oversight Board just approves the contractual agreement.'"

Board Member Richardson concurred that doing so is what the Oversight Board is obligated to do.

Board Member Catlin suggested Oversight Board Counsel could wordsmith the section.

Oversight Board Counsel Kotkin stated, "You do not even need to have me do that. **Ms. Staats** made a very good recommendation. If I were trying to seize your comment, sir, **Mr. Richardson,** now speaking to you directly, you would simply delete the words 'the actions of the Successor Agency' so that Section 3 would read: 'The Oversight Board approves the contractual agreement created by the engagement letter provided by Best Best & Krieger to the Successor Agency to provide legal counsel for purposes of litigation against DOF.' You are not taking a position on the merits that way."

Chairman Ruh asked Board Member Richardson if the language change would suffice.

Board Member Richardson stated, "That is fine, I did not mean to take so long to…"

Chairman Ruh stated, "No, that is fine. We want to make sure everybody is comfortable with what we are doing."

Board Member Richardson stated, "I appreciate that. Thank you."

Board Member Hillman asked if there are any Brown Act issues associated with amending the Resolution as suggested.

Oversight Board Counsel Kotkin stated, "Absolutely not. You are not changing the substance of this item one iota. It is a clarification of the function of this Board as the Board itself sees itself."

Chairman Ruh asked Oversight Board Counsel Kotkin to please read the revision for the benefit of the Board and staff.

Oversight Board Counsel Kotkin stated that he would be happy to do so. He stated, "Section 3 of proposed Resolution No. 14-04, as amended, would read: 'The Oversight Board approves the contractual agreement created by the engagement letter provided by Best Best & Krieger to the Successor Agency to provide legal counsel for purposes of litigation against DOF.'"

Chairman Ruh asked if everyone is clear with the proposed new language.

Board Member Piotrowski stated, "I have a question. What does this do if we strike these words? Do we have to come back and meet to approve all this stuff, or can we go ahead and approve this with that deletion?"

Oversight Board Counsel Kotkin replied, "Yes. It happens all the time at City Council and County Board of Supervisors meetings—this exact type of exercise."

Moved by Vice Chairperson Johnson and seconded by Board Member Catlin that Resolution No. 14-04, entitled, **"A Resolution of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency Approving the Successor Agency to the City of Montclair Redevelopment Agency's Action to Seek Legal Counsel for the Purpose of Pursuing Legal Action Against the Department of Finance,"** be read by number and title only, further reading be waived, and it be declared adopted as amended.

The Oversight Board waived the reading of the Resolution.

Resolution No. 14-04 was adopted by the following vote:

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

V. COMMUNICATIONS

A. Staff – None

B. Chairman and Members

1. Board Member Catlin stated, "I will just say that this was one of the longer meetings the Oversight Board has had, but it was a good discussion. I appreciate it."

2. Chairman Ruh stated, "And I appreciate making sure everybody is comfortable before we move on with items because we do not need problems down the line."

VI. 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