

**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, March 9, 2016  
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  
Phil Hillman – Ontario-Montclair School District Appointee  
Janet Kulbeck – City of Montclair Employee Organization Appointee  
John Richardson – County of San Bernardino Appointee

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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 January 20, 2016

IV. BUSINESS ITEMS

- A. Consider Adoption of Resolution No. 16-03 Recommending a Proposal by Bill Fox for the Purchase and Development of Successor Agency-Owned Property Located in the Southeast Quadrant of Ramona Avenue and State Street

- B. Consider Adoption of Resolution No. 16-04 Authorizing the Successor Agency to Enter into Agreement No. 16-22 with Van Lant & Fankhanel, LLP, to Provide Auditing Services to the Successor Agency Related to Bond Transactions

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V. COMMUNICATIONS

- A. Staff
- B. Chairman and Members

VI. ADJOURNMENT

*The above actions of the Oversight Board shall not become effective for five business days, pending any request for review by DOF. If DOF requests review of the above Board actions, it will have sixty 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 April 13, 2016, 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 Oversight Board after distribution of the Agenda packet are available for public inspection in the Office of the City Clerk 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, Andrea M. Phillips, Secretary, hereby certify that I posted, or caused to be posted, a copy of this agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the north door of Montclair City Hall on March 3, 2016.*

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 16-03 APPROVING A PROPOSAL BY BILL FOX FOR THE PURCHASE AND DEVELOPMENT OF SUCCESSOR AGENCY-OWNED PROPERTY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET	<b>DATE:</b> March 9, 2016 <b>SECTION:</b> BUSINESS ITEMS <b>ITEM NO.:</b> A <b>FILE I.D.:</b> OBO050 <b>DEPT.:</b> OVERSIGHT BOARD
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**REASON FOR CONSIDERATION:** Pursuant to direction provided by the Oversight Board on July 8, 2015, staff has solicited proposals for the disposition of the Successor Agency-owned property located in the southeast quadrant of Ramona Avenue and State Street. The Request for Proposals (RFP) distributed by staff resulted in two responses to the RFP. The Oversight Board is requested to consider adoption of Resolution No. 16-03 approving the proposal submitted by Bill Fox for acquisition and development of the Ramona Avenue and State Street property. If adopted by the Oversight Board, Resolution No. 16-03 would direct staff to begin the process to negotiate a purchase and sale agreement with Mr. Fox.

A copy of the RFP and the responses to the RFP have been separately included in Oversight Board members' agenda packet for consideration.

**BACKGROUND:** As the Oversight Board is aware, the Redevelopment Dissolution Law (ABX 1 26) requires successor agencies to dispose of former redevelopment agency-owned assets as determined pursuant to a Long Range Property Management Plan (LRPMP) approved by the Department of Finance (DOF). The Successor Agency property located in the southeast quadrant of Ramona Avenue and State Street was listed as an asset on the former City of Montclair Redevelopment Agency's LRPMP slated for sale.

The Ramona Avenue property was purchased by the Redevelopment Agency in 1999 for the Ramona Avenue Grade Separation project. The property was originally 5.4 acres. A portion of the property was sold to Monte Vista Water District for a blending station and a portion of the site was used for the grade separation. As a consequence of the grade separation project and the sale of the land to the Monte Vista Water District, a remnant parcel of approximately 2.65 acres was created. The property is zoned MIP Manufacturing.

The Oversight Board authorized staff to have the appraisal of the Ramona Avenue property updated at their meeting conducted on July 8, 2015. The Successor Agency Board of Directors and the Oversight Board further requested staff issue a RFP to determine interest in purchase and development of the site. DOF approval of the action to update the appraisal was secured and the completed appraisal was received by staff on October 6, 2015. Staff issued the RFPs on November 11, 2015, with submission of responses due to the Successor Agency on January 19, 2016.

As indicated, two responses to the RFPs were received. The responses to the Request for Proposals were evaluated based on the following criteria:

- Completeness and conformity with the RFP.
- Proposed use and overall design concept that conforms to the General Plan, zoning, and all other applicable laws.
- The timeframe for closing a purchase transaction and development of the site.
- The purchase price and financial capacity of the bidder.
- The economic benefit of the development to the City, other taxing entities, and the community including employment generation.

Three City staff members evaluated each proposal by the established criteria included in the RFP. A maximum number of 100 points could be scored by each proposal. The average score achieved by the proposal submitted by Mr. Fox was 96 points. The average score for the competing proposal was 23.34 points.

The response to the RFP submitted by Mr. Fox was complete and conformed to the established criteria. Mr. Fox proposes to develop the property as a 47,000 square foot building with a two story office structure. The building would be developed as a speculative investment marketed for light-medium manufacturing or warehouse/distribution. The proposed use of the property conforms to the General Plan and Zoning Code.

A schedule of performance was submitted in the proposal by Mr. Fox as well a letter from a lender prepared to provide construction and permanent financing. The stated purchase price conforms to the price established by the appraisal. Mr. Fox has built five other projects in the City which demonstrates his financial capacity and ability to see a project through to fruition. Furthermore, the proposal submitted by Mr. Fox demonstrates the economic benefit of the project to the City and other taxing agencies on a short term and long term basis. It is estimated that if the building is utilized by a manufacturing business approximately 54 jobs would be created and if the building is used for a warehouse approximately 20 jobs would be created.

Successor Agency staff believes the response to the RFP submitted by Bill Fox to be most advantageous to the taxing agencies in keeping with Section 34177(e) of the Health and Safety Code that states the successor agency is required to dispose of assets and "the disposal is to be done expeditiously and in a manner aimed at maximizing value."

It should be noted that the proposal submitted by Mr. Fox also makes provisions for the request by Monte Vista Water District to purchase a 20 foot strip of land adjacent to its existing parcel.

Action by the Successor Agency Board of Directors to recommend the Oversight Board approve the proposal submitted by Mr. Fox is scheduled for consideration at its regular meeting on March 7, 2016.

The Oversight Board is requested to consider the proposal submitted by Mr. Fox. The

Oversight Board is further requested to direct staff to prepare the necessary documentation for sale of the property and development of the site in the event the Oversight Board approves the proposal submitted by Mr. Fox.

**FISCAL IMPACT:** The Oversight Board's approval of the proposal submitted by Mr. Fox for the sale and development of the site at the southeast quadrant of Ramona Avenue and State Street will create no immediate fiscal impact for the City or other taxing entities. If the Oversight Board approves this response to the RFP, staff would be directed to negotiate elements of a purchase and sale agreement with Mr. Fox. The purchase and sale agreement would return to the Successor Agency Board of Directors and Oversight Board for consideration. As indicated, the purchase price offered by Mr. Fox in his proposal conformed to the appraisal.

If the response to the proposal submitted by Mr. Fox is rejected, or Mr. Fox for some reason declines to complete the purchase, this matter would return to the Successor Agency and Oversight Board for further consideration.

Upon any eventual sale of the former Redevelopment Agency-owned parcel, the proceeds of the sale would be used to defease Redevelopment Project Area No. V Tax Allocation Bond debt.

**RECOMMENDATION:** Staff recommends the Oversight Board adopt Resolution No. 16-03 approving a proposal by Bill Fox for the purchase and development of the Successor Agency-owned property located in the southeast quadrant of Ramona Avenue and State Street.

**RESOLUTION NO. 16-03**

**A RESOLUTION OF THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING A PROPOSAL BY BILL FOX FOR PURCHASE AND DEVELOPMENT OF THE SUCCESSOR AGENCY-OWNED PROPERTY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET AND AUTHORIZING PREPARATION OF A PURCHASE AND SALE AGREEMENT**

**WHEREAS**, Part 1.85 of the Community Redevelopment Law ("Part 1.85") as adopted by ABX1 26 ("AB 26") and modified by AB 1484 and SB107 provided for the statewide dissolution of all redevelopment agencies, including the City of Montclair Redevelopment Agency ("Agency"), and provided that, thereafter, a successor agency would administer the enforceable obligations of the Agency and otherwise wind up the Agency's affairs, all subject to the review and approval by an oversight board; and

**WHEREAS**, on January 12, 2012, the City Council of the City of Montclair adopted Resolution No. 12-2934 becoming the Successor Agency to the City of Montclair Redevelopment Agency ("Successor Agency"); and

**WHEREAS**, pursuant to Health and Safety Code Section 34179.7, the California Department of Finance ("DOF") issued a "finding of completion" to the Successor Agency; and

**WHEREAS**, thereafter, pursuant to Health and Safety Code Section 34191.5(b), the Successor Agency timely prepared, and the Oversight Board of the Successor Agency (the "Oversight Board") and DOF timely approved a Long-Range Property Management Plan addressing the disposition and use of the real property of the dissolved Agency ("LRPMP"), which approvals took place on November 13, 2013 and February 12, 2014 respectively, ; and

**WHEREAS**, a Successor Agency-owned property located in the southeast quadrant of Ramona Avenue and State Street ("subject site") is identified as a property for disposition by sale in the LRPMP; and

**WHEREAS**, the Oversight Board authorized appraisal of the subject site on July 8, 2015, and the Successor Agency received the completed appraisal on October 6, 2015; and

**WHEREAS**, Successor Agency staff issued a Request for Proposals from the public for the acquisition and development of the subject site on November 11, 2015 with submission of responses to the Request for Proposals due to the Successor Agency by January 19, 2016; and

**WHEREAS**, Successor Agency staff received two responses to the Request for Proposals that City staff evaluated in accord with the selection criteria identified in the Request for Proposals; and

**WHEREAS**, based upon the cumulative ratings of staff to the responses to Request for Proposals the selection of Bill Fox to pursue acquisition and development of the subject site is recommended; and

**WHEREAS**, the Oversight Board has reviewed the Request for Proposals, responses to the Request for Proposals, recommendations by staff, and staff report; and

**WHEREAS**, pursuant to Health and Safety Code Section 34179(h)(1)(D) as modified per SB 107, oversight boards are not required to submit "[t]ransfers of governmental property pursuant to an approved long-range property management plan" to the DOF for approval; and

**WHEREAS**, this Resolution's purpose is to commence the process that the Oversight Board hopes will affect the transfer of the subject site to Bill Fox pursuant to the LRPMP and specific terms and conditions to be negotiated consistent with his complete response to the Request for Proposals (the "Fox Proposal"), including but not

limited to a purchase price of one million five hundred twenty-nine thousand five hundred dollars (\$1,529,500.00).

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board to the City of Montclair Redevelopment Agency, does hereby find and determine as follows:

**Section 1.** The foregoing Recitals are incorporated into this Resolution by this reference and constitute a material part of the Resolution.

**Section 2.** After review of the Request for Proposals, responses to the Request for Proposals, recommendations by the Successor Agency, staff and the staff report, the Oversight Board finds the "Fox Proposal" to be most advantageous option for sale of the subject site available to the taxing agencies in keeping with Section 34177(e) of the Health and Safety Code that states the successor agency is required to dispose of assets and "the disposal is to be done expeditiously and in a manner aimed at maximizing value."

**Section 3.** The Oversight Board approves selection of the Fox Proposal as most compliant with Section 34177(e) of the Health and Safety Code, and instructs staff to complete documentation of the final purchase terms, definitions, and conditions of sale, and to develop a mutually acceptable Purchase and Sale Agreement ("PSA") consistent with the Fox Proposal.

**Section 4.** This approval authorizes staff to negotiate the PSA, and future Successor Agency and Oversight Board action will be necessary to consummate the sale of the subject site to Bill Fox pursuant to a PSA.

**Section 5.** The Secretary of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency shall certify to the adoption of this Resolution and shall maintain this Resolution approved hereunder on file as a public record.

**Section 6.** The approval of this Resolution does not result in any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

**Section 7.** This Resolution shall be effective upon its adoption and certification.

**APPROVED AND ADOPTED** this XX day of XX, 2016.

**ATTEST:**

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Chairman

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Secretary

I, Andrea M. Phillips, Secretary of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 16-03 was duly adopted by the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency at a regular meeting thereof held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

AYES: XX  
NOES: XX  
ABSTAIN: XX  
ABSENT: XX

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Andrea M. Phillips, Secretary

## AGENDA REPORT

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<b>SUBJECT:</b> CONSIDER ADOPTION OF RESOLUTION NO. 16-04 AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AGREEMENT NO. 16-22 WITH VAN LANT & FANKHANEL, LLP, TO PROVIDE AUDITING SERVICES TO THE SUCCESSOR AGENCY RELATED TO BOND TRANSACTIONS	<b>DATE:</b> March 9, 2016 <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:** Oversight Board staff is requesting that the Oversight Board authorize the Successor Agency to enter into Agreement No. 16-22 with Van Lant & Fankhanel, LLP, Certified Public Accountants, to perform an audit of financial statements of the Successor Agency covering bonding requirement and related financial disclosures.

**BACKGROUND:** Prior to the dissolution law, the Health and Safety Code required all redevelopment agencies to have an annual financial audit. Additionally, this audit was utilized to comply with the continuing annual financial disclosure requirements, present in redevelopment bond issues, which are still outstanding today.

As part of the dissolution law, Section 34177(n) of the Health and Safety Code was established to replace this annual audit requirement indicating that Successor Agencies were to have an annual “post audit” of its financial transactions. Since “post audit” was not defined, the Department of Finance (DOF) issued its interpretation that inclusion of the Successor Agency operations within the financial audit of the City would meet the minimum requirements of this section but additionally they noted that “Oversight Board can specifically require a separate audit of the Successor Agency as a matter of best practice, if they believe that a more focused audit is warranted, or if a separate audit is required by bond covenants”.

The inclusion of the Successor Agency’s financial transactions within the City’s annual financial audit, while meeting the minimum requirements of the Health and Safety Code, does not provide sufficient information for the bonding community to determine the amounts of pledged revenues by redevelopment project area and how those revenues compare to debt service. To provide specific information on pledged revenues and debt servicing, Successor Agency staff has to prepare financial statements specifically covering bond-only transactions. These statements have been audited, as part of an annual engagement agreement, by the City’s auditing firm, and filed with the annual bond continuing disclosure reports with the bonding community for redevelopment bond issues still outstanding.

DOF, as part of its review of our current Recognized Obligation Payment Schedule (ROPS), is now indicating that the annual engagement agreement is not, in its opinion, sufficient documentation of the contractual obligation to conduct this audit. DOF has indicated that a specific agreement between the Successor Agency and the auditing firm of Van Lant & Fankhanel, LLP, Certified Public Accountants, needs to be obtained.

To satisfy DOF's need for specific documentation, on March 7, 2016, the Successor Agency approved Consultant Agreement No. 16-22 between the Successor Agency and Van Lant & Fankhanel, LLP, Certified Public Accountants, to continue to perform existing auditing services in the same manner and amount as specified in the previous annual engagement agreements.

**FISCAL IMPACT:** There is no additional fiscal impact to the Successor Agency as a result of entering into this separate agreement. As indicated, this agreement continues the existing annual auditing services of bond related transactions in the same manner and amount as they currently exist.

**RECOMMENDATION:** Staff recommends that the Oversight Board adopt Resolution No. 16-04 authorizing the Successor Agency to enter into Agreement No. 16-22 with Van Lant & Fankhanel, LLP, to provide auditing services to the Successor Agency related to bond transactions.

**RESOLUTION NO. 16-04**

**A RESOLUTION OF OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AUTHORIZING THE SUCCESSOR AGENCY TO ENTER INTO AGREEMENT NO. 16-22, A CONSULTANT AGREEMENT FOR AUDITING SERVICES BETWEEN VAN LANT & FANKHANEL, LLP, CERTIFIED PUBLIC ACCOUNTANTS AND THE CITY OF MONTCLAIR AS SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY RELATING TO BOND TRANSACTIONS**

**WHEREAS**, Assembly Bill 1X 26 ("AB 26") was signed by the Governor on June 28, 2011 and upheld as constitutional by the California Supreme Court. On June 27, 2012, the Governor signed Assembly Bill 1484 ("AB 1484"), and on September 22, 2015 the Governor signed Senate Bill 107 ("SB 107"). AB 26, AB 1484 and SB 107 (together called the "Dissolution Bills") eliminated California redevelopment agencies statewide, established successor agencies to pay, perform, and effectuate the enforceable obligations of the former redevelopment agencies and to wind down the affairs of the former redevelopment agencies; and

**WHEREAS**, the City of Montclair Redevelopment Agency ("Agency") is now a dissolved redevelopment agency pursuant to the Dissolution Bills; and

**WHEREAS**, by Resolution considered and approved by the City Council of the City of Montclair at an open public meeting, the City chose to become and serve as the "Successor Agency" to the dissolved Agency under the Dissolution Act; and

**WHEREAS**, as of and on and after February 1, 2012, the City serves and acts as the Successor Agency and is performing its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to the review and approval by a seven-member oversight board ("Oversight Board"); and

**WHEREAS**, Section 34179 provides that the Oversight Board has fiduciary responsibilities to holders of enforceable obligations and the taxing entities that benefit from distributions of property tax and other revenues pursuant to Section 34188 of Part 1.85 of the Dissolution Act; and

**WHEREAS**, pursuant to Section 34179 of the Health and Safety Code, the Successor Agency's Oversight Board was formed and the initial meeting occurred on April 25, 2012; and

**WHEREAS**, pursuant to DOF's interpretation of Section 34177(n) which requires an annual "post audit" of Successor Agency operations, DOF indicated that a more focused audit could be done as part of a separate audit required by bond covenants.

**WHEREAS**, the Successor Agency has been accomplishing separate focused audits of bonding transactions under an annual engagement contract with Van Lant & Fankhanel, LLP, Certified Public Accountants which DOF now feels needs to be documented in a separate contract; and

**WHEREAS**, the Successor Agency has approved Agreement Number 16-22 for professional services with Van Lant & Fankhanel, LLP, Certified Public Accountants to meet DOF's requirement; and

**WHEREAS**, pursuant to the Dissolution Act, the actions of the Successor Agency must be approved by the Oversight Board; and

**WHEREAS**, pursuant to the Dissolution Act, the actions of the Oversight Board, including those approved by this Resolution, do not become effective for five (5) business days pending any request for review by DOF; and if DOF requests review hereof, it will have sixty days from the date of its request to approve this Oversight Board action or return it to the Oversight Board for reconsideration and the action, if subject to review by DOF, would not be effective until approved by DOF.

**NOW, THEREFORE, BE IT RESOLVED** that the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency does hereby find and determine as follows:

**Section 1.** The above recitals are true and correct and area substantive part of the Resolution.

**Section 2.** At its meeting of March 7, 2016, the Successor Agency authorized the services of Van Lant & Fankhanel, LLP, Certified Public Accountants to provide auditing services to the Successor Agency relating to bond transactions and entered into agreement number 16-22, attached, to continue those services.

**Section 3.** The Oversight Board approves the actions of the Successor Agency in retaining the services of Van Lant & Fankhanel, LLP, Certified Public Accountants to provide auditing services and in authorizing a professional services agreement to be executed.

**Section 4.** The Oversight Board hereby directs the Successor Agency Executive Director or his designee to take any and all action necessary to carry out the purposes of this Resolution and comply with applicable law.

**Section 5.** The approval of this Resolution does not result in any action that may have a significant effect on the environment. As a result, such action does not constitute a project subject to the requirements of the California Environmental Quality Act.

**Section 6.** The Secretary of the Oversight Board shall certify to the adoption of this Resolution and shall maintain this Resolution on file as a public record as approved hereby.

**Section 7.** Pursuant to Health and Safety Code Section 34179(h), all actions taken by the Oversight Board may be reviewed by the State of California Department of Finance; therefore, this Resolution shall become effective five (5) business days after its adoption, pending a request for review by the State of California Department of Finance. The period for this review may be extended by up to sixty (60) days pursuant to Health and Safety Code Section 34181(f).

**APPROVED AND ADOPTED** this XX day of XX, 2016.

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Chairman

**ATTEST:**

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Secretary

I, Andrea M. Phillips, Secretary of the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 16-04 was duly adopted by the Oversight Board of Directors at a regular meeting thereof held on the XX day of XX, 2016, and that it was adopted by the following vote, to-wit:

AYES: XX  
NOES: XX  
ABSTAIN: XX  
ABSENT: XX

\_\_\_\_\_  
Andrea M. Phillips  
Secretary

**AGREEMENT NO. 16-22**

**CITY OF MONTCLAIR AS SUCCESSOR AGENCY**

**AGREEMENT FOR CONSULTANT SERVICES**

**Annual Audit Services**

THIS AGREEMENT is made and effective as of March 1, 2016 between the City of Montclair as Successor Agency for the City of Montclair Redevelopment Agency, ("Successor Agency") and Van Lant & Fankhanel, LLP, Certified Public Accountants, a California Partnership ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on March 1, 2016 and shall remain and continue in effect for a period of 48 months until tasks described herein are completed, but in no event later than March 1, 2020, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Engagement Services and Responsibilities, EXHIBIT A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in EXHIBIT A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent Successor Agency in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on Successor Agency's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 5 hereof.

## 5. PAYMENT

(a) The Successor Agency agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in EXHIBIT B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed \$40,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the Successor Agency.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the Successor Agency disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Consultant agrees that, in no event shall Successor Agency be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by Successor Agency of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to Successor Agency. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by Successor Agency.

## 6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The Successor Agency may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Successor Agency suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the Successor Agency shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the Successor Agency. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the Successor Agency pursuant to Section 5(c).

## 7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the Successor Agency shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

## 8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by Successor Agency that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of Successor Agency or its designees at reasonable times to such books and records; shall give Successor Agency the right to examine and audit said books and records; shall permit Successor Agency to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to

this Agreement shall become available to the Successor Agency and may not be used, reused, or otherwise disposed of by the Consultant without the permission of the Successor Agency. With respect to computer files, Consultant shall make available to the Successor Agency, at the Consultant's office and upon reasonable written request by the Successor Agency, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

## 9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless Successor Agency and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any entity or individual that consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless Successor Agency, and any and all of its employees, officials, and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant. Said indemnification shall include any claim that Consultant, or Consultant's employees or agents, are considered to be employees of the Successor Agency or are entitled to any employee benefits from Successor Agency, including but not limited to those available under Public Employees Retirement Law.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subconsultant or other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of Successor Agency to monitor compliance with these requirements imposes no additional obligations on Successor Agency and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend Successor Agency as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

10. INSURANCE

(a) Consultant shall neither commence work under this Agreement until it has obtained all insurance required hereunder in a company or companies acceptable to Successor Agency nor shall Consultant allow any subcontractor to commence work on a subcontract until all insurance required of the subcontractor has been obtained. Consultant shall, at all times during the term of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-: VI:

Commercial general liability at least as broad as ISO CG 0001 (per occurrence)	1,000,000
Commercial general liability at least as broad as ISO CG 0001 (general aggregate)	2,000,000
Commercial auto liability at least as broad as ISO CA 0001 (per accident)	1,000,000
Professional Liability (per claim and aggregate)	1,000,000
Worker's compensation	Statutory

(b) All insurance required by this section shall apply on a primary basis. Consultant agrees that it will not cancel or reduce said insurance coverage. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect Successor Agency may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, Successor Agency may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

(c) Auto liability insurance shall cover owned, nonowned and hired autos. If Consultant owns no vehicles, auto liability coverage may be provided by means of a nonowned and hired auto endorsement to the general liability policy.

(d) At all times during the term of this Agreement, Consultant shall maintain on file with Successor Agency a certificate of insurance, in a form acceptable to Successor Agency showing that the aforesaid policies are in effect in the required amounts. The general liability policy shall contain or be endorsed to contain a provision including the Indemnitees as additional insureds, Consultant shall promptly file with Successor Agency such certificate or certificates and endorsements if applicable. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

(e) No policy required by this section shall prohibit Consultant from waiving any right of recovery prior to loss. Consultant hereby waives such right with regard to the Indemnitees.

(f) All insurance coverage and limits provided by Consultant and available or applicable to this agreement *are* intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

(g) In accordance with the provisions of California Labor Code, Section 3700, every employer shall secure the payment of compensation to his employees. Consultant shall, prior to commencing work, sign and file with City of Montclair a certification as follows:

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

(h) General Insurance Requirements: All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer, insured and all subcontractors waive the right of subrogation against Successor Agency and Successor Agency's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by Successor Agency; and (3) they cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to Successor Agency by certified mail. Consultant shall furnish Successor Agency with copies of all such policies. Consultant may effect for its own account insurance not required under this Agreement.

## 11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the Successor Agency a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of Successor Agency for any purpose, including eligibility under Public Employees Retirement Law. Neither Successor Agency nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the Successor Agency. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against Successor Agency, or bind Successor Agency in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement Successor Agency shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for Successor Agency. Successor Agency shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

## 12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The Successor Agency, and its

officers and employees, shall not be liable at law or in equity occasioned by failure of *the* Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the Successor Agency in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the Successor Agency will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the Successor Agency to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of Successor Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without Successor Agency's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the Successor Agency. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives Successor Agency notice of such court order or subpoena.

(b) Consultant shall promptly notify Successor Agency should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the Successor Agency. Successor Agency retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with Successor Agency and to provide the opportunity to review any response to discovery requests provided by Consultant. However, Successor Agency's right to review any

such response does not imply or mean the right by Successor Agency to control, direct, or rewrite said response.

(c) Consultant covenants that neither he/she nor any office or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the Successor Agency or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the Successor Agency or the study area prior to the completion of the work under this Agreement.

## 16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To Successor Agency:

Donald L. Parker, CPA, Finance Director  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant:

Greg Fankhanel, CPA, Partner  
Van Lant & Fankhanel, LLP  
25901 Kellogg Street  
Loma Linda, CA 92354

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the Successor Agency. Because of the personal nature of the services to be rendered pursuant to this Agreement, only Greg Fankhanel (responsible employee) shall perform the services described in this Agreement.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall

provide Successor Agency fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the Successor Agency shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the Successor Agency and the Consultant.

17. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

18. GOVERNING LAW

The Successor Agency and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF ENGAGEMENT REQUIREMENTS

Consultant is bound by the contents of Engagement Services and Responsibilities attached hereto as Exhibit A and incorporated herein by this reference for performance of procedures and the indication of responsibilities between the parties to this agreement. The nature of future services shall be the same as specified in Exhibit A unless such cannot be accomplished and then services will be subject to renegotiation between the parties.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from Successor Agency during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF MONTCLAIR AS SUCCESSOR  
AGENCY FOR THE CITY OF MONTCLAIR  
REDEVELOPMENT AGENCY**

**VAN LANT & FANKHANEL, LLP**

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Partner

Attest:

By: \_\_\_\_\_  
Secretary

## **Engagement Services and Responsibilities**

### **Services to be Provided**

Van Lant & Fankhanel, LLP (Consultant) will audit the financial statements of the City of Montclair as Successor Agency for the City of Montclair Redevelopment Agency (Successor Agency), which comprise the bonding financial disclosure basis project area balance sheet, all debt services funds and the bonding financial disclosure basis project area revenues, expenditures and changes in fund balances, all debt service funds and the related notes to the financial statements.

The financial statements will be prepared by the Successor Agency on the basis of the financial reporting provisions of bonding financial disclosure requirements, which is a basis of accounting other than accounting principles generally accepted in the United States of America, to comply with the financial disclosure provisions of the bonding contractual relationships referred to above.

### **Audit Objectives**

The objective the audit is the expression of an opinion as to whether the financial statements referred to above are fairly presented, in all material respects, in conformity with the financial reporting disclosure provisions applicable to the outstanding bond issues.

The audit report will include a paragraph describing that the financial statements are prepared on the basis of the financial reporting provisions of bonding financial disclosure requirements, which is a basis of accounting other than accounting principles generally accepted in the United States of America. As a result, Consultant's audit report will include an adverse opinion on the financial statements in accordance with U.S. generally accepted accounting principles. The audit will be conducted in accordance with auditing standards generally accepted in the United States of America, and will include tests of accounting records, and other procedures Consultant consider necessary to enable Consultant to express an opinion and to render the required reports. Consultant cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for Consultant to modify their opinions or add emphasis-of-matter or other-matter paragraphs. If Consultant's opinions on the financial statements are other than unmodified, Consultant will discuss the reasons with Successor Agency in advance. If, for any reason, Consultant are unable to complete the audit or are unable to form or have not formed opinions, Consultant may decline to express opinions or to issue a report as a result of this engagement.

### **Management Responsibilities**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with the financial reporting provisions of bonding financial disclosure requirements. Management is also responsible for the design, implementation,

and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Management is also responsible for including all informative disclosures that are appropriate for the special purpose framework used to prepare the entity's financial statements, including:

- a. a description of the special purpose framework, including a summary of significant accounting policies, and how the framework differs from GAAP.
- b. informative disclosures similar to those required by GAAP, in the case of special purpose financial statements that contain items that are the same as, or similar to, those in financial statements prepared in accordance with GAAP.
- c. a description of any significant interpretations of the contract on which the special purpose financial statements are based, in the case of special purpose financial statements prepared in accordance with a contractual basis of accounting.
- d. additional disclosures beyond those specifically required by the framework that may be necessary for the special purpose financial statements to achieve fair presentation.

As part of the audit, Consultant will assist with preparation of Successor Agency financial statements, and related notes. Successor Agency will be required to acknowledge in the written representation letter Consultant's assistance with preparation of the financial statements and that Successor Agency have reviewed and approved the financial statements, and related notes prior to their issuance and have accepted responsibility for them. Successor Agency agree to assume all management responsibilities for any nonaudit services Consultant provide; oversee the services by designating an individual, preferably from senior management, who possesses suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met and that there is reasonable assurance that government programs are administered in compliance with compliance requirements. Successor Agency is also responsible for the selection and application of accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts.

Management is also responsible for making all financial records and related information available to Consultant and for ensuring that management is reliable and financial

information is reliable and properly recorded. Successor Agency is also responsible for providing Consultant with (1) access to all information of which Successor Agency is aware that is relevant to the preparation and fair presentation of the financial statements, (2) additional information that Consultant may request for the purpose of the audit, and (3) unrestricted access to persons within the government from whom Consultant determine it necessary to obtain audit evidence.

Successor Agency responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Successor Agency responsibilities include adjusting the financial statements to correct material misstatements and confirming to Consultant in the written representation letter that the effects of any uncorrected misstatements aggregated by Consultant during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Successor Agency is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing Consultant about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Successor Agency responsibilities include informing Consultant of its knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, Successor Agency is responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for Consultant previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to Consultant corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. Successor Agency is also responsible for providing management's views on Consultant's current findings, conclusions, and recommendations, as well as any planned corrective actions, for the report, and for the timing and format for providing that information.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on Successor Agency's website, Electronic sites are a means to distribute information and, therefore, Consultant are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

## **Audit Procedures—General**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, Consultant's audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. Consultant will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because Consultant will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by Consultant, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements.

However, Consultant will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to Consultant's attention. Consultant will also inform the appropriate level of management of any violations of laws or governmental regulations that come to Consultant's attention, unless clearly inconsequential, and of any material abuse that comes to Consultant's attention. Consultant's responsibility as auditors is limited to the period covered by Consultant's audit and does not extend to any later periods for which Consultant are not engaged as auditors.

Consultant's procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. Consultant will request written representations from Successor Agency's attorneys as part of the engagement, and they may bill Successor Agency for responding to this inquiry. At the conclusion of Consultant's audit, Consultant will require certain written representations from Successor Agency about the financial statements and related matters.

## **Audit Procedures—Internal Control**

Consultant's audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. An audit is not designed to provide assurance on internal control

or to identify deficiencies in internal control. However, during the audit, Consultant will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards.

### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, Consultant will perform tests of the entity's compliance with the provisions of applicable laws, regulations, contracts, and agreements. However, the objective of Consultant's audit will not be to provide an opinion on overall compliance and Consultant will not express such an opinion.

### **Engagement Administration, Fees, and Other**

Consultant's understand that Successor Agency employees will prepare all cash, accounts receivable, or other confirmations Consultant requests and will locate any documents selected by Consultant for testing.

Mr. Greg Fankhanel, CPA, Partner is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. Consultant's fee for these services will not exceed \$40,000 for the term of Consultant's engagement. Consultant's invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with Consultant's policies, work may be suspended if Successor Agency's account becomes 30 days or more overdue and may not be resumed until the account is paid in full. If Consultant elect to terminate Consultant's services for nonpayment, Consultant's engagement will be deemed to have been completed upon written notification of termination, even if Consultant has not completed Consultants' report(s). Successor Agency will be obligated to compensate Consultant for all time expended and to reimburse Consultant for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from Successor Agency personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, Consultant will discuss it with Successor Agency and arrive at a new fee estimate before Consultant incur the additional costs.

**Schedule of Payment:**

As work progresses Successor Agency agrees to pay Consultant monthly for actual time spent on the various engagements priced out utilizing the hours performed by the various professional staff working on such engagements.