

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

**AGENDA**

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

Special Meeting  
Wednesday, July 6, 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  
Michael Piotrowski – City of Montclair Employee Organization Alternate Appointee  
John Richardson – County of San Bernardino Appointee

Page No.

I. PRELIMINARY MATTERS

- A. Call to Order
- B. Roll Call

II. PUBLIC COMMENT

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

III. APPROVAL OF MINUTES

- A. Minutes of the Special Oversight Board Meeting of March 9, 2016 3

IV. PUBLIC HEARINGS

- A. Consider Adoption of Resolution No. 16-05 Approving Agreement No. 16-51, Approving the Action of the Successor Agency to the City of Montclair Redevelopment Agency Approving a Purchase and Sale Agreement Between the Successor Agency and Bill Fox Regarding the Property Generally Located in the Southeast Quadrant of Ramona Avenue and State Street 5

V. COMMUNICATIONS

A. Staff

1. Discussion Regarding 2016-17 Recognized Obligation Payment Schedule
2. Discussion of Successor Agency Review Conducted by the State Controller's Office (Attachment V. A-2)

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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 on July 13, 2016, has been cancelled. The next regularly scheduled Oversight Board meeting will be held on August 10, 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 June 30, 2016.*

MINUTES OF THE REGULAR MEETING OF THE  
OVERSIGHT BOARD FOR THE SUCCESSOR  
AGENCY TO THE CITY OF MONTCLAIR REDE-  
VELOPMENT AGENCY HELD ON WEDNESDAY,  
MARCH 9, 2016, AT 6:00 P.M. IN THE CITY  
COUNCIL CHAMBERS, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA

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I. PRELIMINARY MATTERS

A. Call to Order

Chairman Ruh called the meeting to order at 6:00 p.m.

B. Roll Call

Present: Chairman Ruh; Board Members Catlin, Hillman, and Kulbeck; Deputy City Manager/Economic Development Executive Director Staats; Finance Director Parker; Oversight Board Counsel Kotkin; Secretary Phillips

Absent: Vice Chairperson Johnson; Board Member Erickson (excused) and Richardson (arrived at 6:04 p.m.)

II. PUBLIC COMMENT - None

III. APPROVAL OF MINUTES

A. Minutes of Special Oversight Board Meeting of January 20, 2016

Moved by Board Member Catlin, seconded by Board Member Hillman, and carried to approve the 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

Deputy City Manager/Economic Development Executive Director Staats indicated two responses were received in response to the request for proposals that was advertised between November and mid-January. She noted the proposal from **Bill Fox** was far superior to the other proposal received. She noted proceeds from the sale would go toward bond repayment.

Board Member Hillman asked if staff knew why only two proposals were submitted.

Deputy City Manager/Economic Development Executive Director Staats noted that the project has requirements to comply with the City's General Plan, zoning, and all other applicable laws. Also, **Monte Vista Water District** requested to purchase a 20-foot strip of land from the property that is adjacent to its existing parcel. She noted **Mr. Fox's** proposal takes **MVWD's** request into consideration.

Moved by Board Member Catlin and seconded by Board Member Hillman that Resolution No. 16-03 be adopted.

Resolution No. 16-03, entitled, "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,"** was adopted by the following vote:

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

**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**

Moved by Board Member Hillman and seconded by Board Member Catlin that Resolution No. 16-04 be adopted.

Resolution No. 16-04, entitled, "A RESOLUTION OF THE 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," was adopted by the following vote:

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

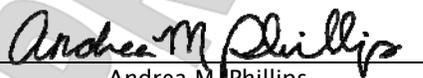
**V. COMMUNICATIONS**

- A. Staff — None
- B. Chairman and Members — None

**VI. ADJOURNMENT**

At 6:15 p.m., Chairman Ruh adjourned the Oversight Board of Directors.

Submitted for Oversight Board approval,

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

## AGENDA REPORT

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**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 16-05 APPROVING AGREEMENT NO. 16-51, APPROVING THE ACTION OF THE SUCCESSOR AGENCY TO THE CITY OF MOTNCLAIR REDEVELOPMENT AGENCY APPROVING A PURCHASE AND SALE AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND BILL FOX REGARDING THE PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET

**DATE:** July 6, 2016

**SECTION:** PUBLIC HEARINGS

**ITEM NO.:** A

**FILE I.D.:** OBO050

**DEPT.:** OVERSIGHT BOARD

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**REASON FOR CONSIDERATION:** Successor Agency staff is requesting the Oversight Board approve the Successor Agency's action to approve Agreement No. 16-51, a Purchase and Sale Agreement between the Successor Agency and Bill Fox regarding the Successor Agency-owned property located in the southeast quadrant of Ramona Avenue and State Street.

Pursuant to Section 34181(f) of the Health and Safety Code, actions relating to disposition of property "shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions." The Notice of Public Hearing regarding the disposition of the property in the southeast quadrant of Ramona Avenue and State Street was published in the Daily Bulletin on June 24, 2016.

Copies of proposed Resolution No. 16-05 and Agreement No. 16-51 are attached for Oversight Board review and consideration.

**BACKGROUND:** 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. The Successor Agency property located in the southeast quadrant of Ramona Avenue and State Street (the "Real Property") was listed as an asset on the former City of Montclair Redevelopment Agency's LRPMP slated for sale. A map of the site is provided as Exhibit 1.

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 that property was sold to Monte Vista Water District for use as 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 vacant acres (the Real Property) was created. The Real Property is zoned MIP Manufacturing.

The Oversight Board authorized staff to have the appraisal of the Real Property updated at its meeting conducted on July 8, 2015. Department of Finance (DOF) approval of the action to update the appraisal was secured and the completed appraisal was received by staff on October 6, 2015.

The Successor Agency Board of Directors and the Oversight Board requested staff issue a Request for Proposals (RFP) to determine interest in purchase and development of the Real Property. Staff issued the RFP's on November 11, 2015 with submission of responses due to the Successor Agency on January 19, 2016. Two responses to the RFP's were received. The responses to the Request for Proposals were evaluated according to criteria established in the RFP.

On March 7, 2016, the Successor Agency approved the proposal submitted by Mr. Bill Fox for disposition of the property located in the southeast quadrant of the Real Property. The Oversight Board approved the selection of the proposal submitted by Mr. Fox on March 9, 2016. The proposal submitted by Mr. Fox was determined to provide the most advantageous terms to the taxing agencies. Both bodies approved the proposal submitted by Mr. Fox (The "Buyer") subject to consideration of a Purchase and Sale Agreement between the Successor Agency and the Buyer.

Successor Agency Counsel prepared the Purchase and Sale Agreement for the Real Property and negotiations regarding the agreement, that included Counsel for the Buyer and Counsel for the Oversight Board, have been completed. The Purchase and Sale Agreement is ready for consideration by the Successor Agency Board of Directors. Prior to its consideration of the Purchase and Sale Agreement, the Successor Agency conducted a public hearing pursuant to Section 33431 of the Health and Safety Code. The staff report to the Successor Agency and the resolution approved by the Successor Agency state that the action of the Successor Agency regarding Agreement No 16-51 must be approved by the Oversight Board before the Purchase and Sale Agreement may be executed by the Successor Agency.

The Oversight Board has indicated that it is seeking a Purchase and Sale Agreement that will culminate in the construction of a project in order to maximize tax revenue for the various taxing agencies. Therefore, in keeping with this request of the Oversight Board, the Purchase and Sale Agreement includes an Option Agreement as a mechanism to incentivize the Buyer to develop improvements and thereby promote generation of tax revenue.

The more salient terms of the Purchase and Agreement include the following terms:

- The consideration to be paid by the Buyer for the purchase of the Real Property from the Successor Agency would be \$1,529,500. The Successor Agency would receive all cash for the property. The purchase price for the property represents its fair market value.
- Escrow would be opened on the date the escrow company receives a fully executed copy of the Purchase Agreement. The effective date ("Effective Date") of the Agreement would become the date both parties have executed the Purchase Agreement.
- Within three days after the Effective Date the Buyer would deliver \$5,000 to the Successor Agency as a non-refundable independent consideration. When closing occurs, a credit of \$5,000 would be applied to the purchase price based upon the payment of the independent consideration. (An independent consideration is being paid by some purchasers of property to address concerns raised by a California Supreme Court decision *Steiner*

*v. Thexton* (106 Cal.Rptr.3d 252) concerning the enforceability of certain purchase and sale agreements.)

- The closing date (“Closing Date”) under the Agreement would be the date a grant deed is recorded in favor of the Buyer. The estimated Closing Date of the purchase transaction is 210 calendar days after the Effective Date of the Agreement. During the time between the Effective Date of the Agreement and the Closing Date, the Buyer would be attempting to secure entitlements for a project which would consist of development of a concrete tilt-up building of not less than 42,300 square feet for warehouse or industrial purposes. After construction of the improvements, the project is anticipated to have an estimated market value of approximately \$5,000,000.
- It is estimated that this project would be reviewed by the Planning Commission approximately 180 days after the Effective Date of the Agreement.
- During the term of the Agreement, until the termination of the Agreement or the Closing Date, the Buyer would have the right to employ environmental consultants, at his sole cost and expense, to make onsite investigations, inspections and evaluations on the property. The Buyer would agree to indemnify and defend any claims against the Successor Agency and City resulting from the entry and access to the site for purposes of such investigations.
- The Successor Agency would be responsible for payment of all closing costs to remove any encumbrances from the Real Property, any seller’s cost of prorations, and any costs for additional services requested from escrow. The Buyer would be responsible for closing costs to include: (1) payment of the escrow holder fees, (2) title policy charges, (3) recording fees, (4) any transfer taxes, and (5) any costs for additional services requested from escrow.
- Mr. Fox may not assign his rights under the agreement without prior consent of the Successor Agency provided that Mr. Fox may assign rights, without Successor Agency consent, to a limited liability company in which Mr. Fox owns no less than fifty percent of the equity.
- As indicated, in order maximize revenue to the taxing agencies, the Oversight Board wants to see the sale of the Real Property culminate in the construction of an industrial building as zoning permits. To that end, the execution of an Option Agreement by the Buyer is a condition of closing escrow. The purpose of the Option Agreement would allow the City to purchase back the property from the Buyer, at a later date, in the event a building is not constructed or completed on the property.

The Option Agreement would grant the City an option to purchase the property back at a price equal to the purchase price paid by the Buyer plus the cost of construction of improvements made to the property through the completion of the sale to the City. The Option Agreement could be exercised by the City anytime after the date of the one year anniversary date of the “Outside Date.” The Outside Date would be 255

calendar days after the Purchase and Sale Agreement is executed by both parties. The Option Agreement would extend until the four year anniversary of the Outside Date.

- If the Buyer completes the minimum square footage building requirement and the minimum required property value requirements, the Option Agreement would be terminated by the City.

**FISCAL IMPACT:** Adoption of Resolution No. 16-05 by the Oversight Board would approve the Successor Agency's action to approve the Purchase and Sale Agreement of the Real Property. Successor Agency staff requested proposals for the sale and development of the Real Property. Two proposals were received and the proposal by Mr. Fox offered the better sales price as well as providing a more coherent proposal contemplating the development of the Real Property. In addition, the Purchase and Sale Agreement includes an option exercisable by the City as a means to incentivize development by Mr. Fox as the Buyer.

Should the Oversight Board approve the action of the Successor Agency to approve Purchase and Sale Agreement, the Agreement with the Buyer would then be executed and escrow would be opened. The Buyer would seek entitlements from the City. With the conclusion of the entitlement process, escrow would be closed.

Upon the close of escrow, the Successor Agency would receive \$1,529,500 less any closing costs (including insurance premiums, escrow fees, recording charges and charges as may be experienced in effecting the conveyance of the Real Property). The proceeds from the sale of the property would be used to repay Redevelopment Project Area No. V Tax Allocation Bonds. If development occurs on the Real Property, additional property taxes and other revenue would become available for use by the effected taxing agencies

**RECOMMENDATION:** Staff recommends that the Oversight Board adopt Resolution No.16-05 approving the action of the Successor Agency to the City of Montclair Redevelopment Agency to approve Agreement No. 16-51, a Purchase and Sale Agreement between the Successor Agency and Bill Fox regarding the property generally located in the southeast quadrant of Ramona Avenue and State Street.

**Exhibit-1**  
**Subject Site: APN 1012-141-18**



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

**NOTICE OF PUBLIC HEARING BY THE OVERSIGHT BOARD FOR THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY ON WEDNESDAY, JULY 6, 2016, TO APPROVE THE ACTION OF THE SUCCESSOR AGENCY TAKEN ON JUNE 20, 2016, APPROVING AGREEMENT NO. 16-51, A PURCHASE AND SALE AGREEMENT BY AND BETWEEN THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY AND BILL FOX REGARDING PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET**

**NOTICE IS HEREBY GIVEN** that the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency will conduct a public hearing on Wednesday, July 6, 2016, at 6:00 p.m. in the City of Montclair City Council Chambers, 5111 Benito Street, Montclair, California, to consider the action of the Successor Agency in approving Agreement No. 16-51, a Purchase and Sale Agreement by and between the Successor Agency to the City of Montclair Redevelopment Agency and Bill Fox concerning property generally located in the southeast quadrant of Ramona Avenue and State Street. The Agreement, approved by the Successor Agency on June 20, 2016, involves disposition of the property pursuant to the Long Range Property Management Plan for the former City of Montclair Redevelopment Agency that was approved by the Oversight Board for the former City of Montclair Redevelopment Agency on November 13, 2013 and approved by the Department of Finance on February 12, 2015.

Any person interested in the above proceeding may appear at the time and place listed above to testify in favor of or in opposition to this item. Any written correspondence regarding this matter must be sent to the attention of the Oversight Board Secretary, 5111 Benito Street, Montclair, California, 91763. A copy of proposed Agreement No. 16-51 may be inspected at the Office of the Oversight Board Secretary located at the City of Montclair City Hall, 5111 Benito Street, Montclair, California, before the public hearing.

If you contest the item listed above in court, you may be limited to challenging only those issues you or someone else cited during the public hearing described in this Notice or documented in written correspondence delivered to the Oversight Board for the Successor Agency to the City of Montclair Redevelopment Agency at, or prior to, the public hearing. Furthermore, you must exhaust any administrative remedies prior to litigating the action of the Oversight Board for the Successor Agency to City of Montclair Redevelopment Agency.

Dated: Tuesday, June 21, 2016

  
\_\_\_\_\_  
Andrea M. Phillips, Secretary  
Oversight Board for the Successor Agency to  
the City of Montclair Redevelopment Agency

Publish: Friday, June 24, 2016

**RESOLUTION NO. 16-05**

**A RESOLUTION OF THE OVERSIGHT BOARD OF THE SUCCESSOR AGENCY TO THE CITY OF MONTCLAIR REDEVELOPMENT AGENCY APPROVING THE ACTION OF THE SUCCESSOR AGENCY TO APPROVE AGREEMENT NO. 16-51, A PURCHASE AND SALE AGREEMENT BETWEEN THE SUCCESSOR AGENCY AND BILL FOX REGARDING THE PROPERTY GENERALLY LOCATED IN THE SOUTHEAST QUADRANT OF RAMONA AVENUE AND STATE STREET**

**WHEREAS**, pursuant to AB x1 26 (the Dissolution Law”) enacted in June 2011(as amended by AB 1484 enacted in June 2012), the City of Montclair Redevelopment Agency was dissolved as of February 1, 2012, and the City of Montclair, acting in a separate limited capacity, and known as the Successor Agency to the City of Montclair Redevelopment Agency has elected to serve as the successor agency (the “Successor Agency”) to the former City of Montclair Redevelopment Agency; and

**WHEREAS**, pursuant to Health and Safety Code Section 34173(g), as added by the Dissolution Law, the Successor Agency is a separate legal entity from the City of Montclair (the City); and

**WHEREAS**, the City Council (the “City Council”) of the City serves in a separate capacity of as the governing board of the Successor Agency; and

**WHEREAS**, the Successor Agency is charged with paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the former City of Montclair Redevelopment Agency; and

**WHEREAS**, an oversight board for the Successor Agency (the Oversight Board”) was formed and functions in accordance with Health and Safety Code Section 34179; and

**WHEREAS**, the real property and other assets of the former City of Montclair Redevelopment Agency were transferred to the control of the Successor Agency as of February 1, 2012 pursuant to Health and Safety Code Section 34175(b), including approximately 5.4 vacant acres located in the southeast quadrant of Ramona Avenue and State Street (the “Property”); and

**WHEREAS**, the Successor Agency prepared a Long-Range Property Management Plan (the LRPMP”), initially approved by the Successor Agency and Oversight Board in November 2013, revised in August 2014 for consideration of approval by the Successor Agency and Oversight Board and approved by the State Department of Finance on February 12, 2015; and

**WHEREAS**, the revised LRPMP provides for the disposition of the Property through a Request for Proposal (the RFP”) process; and

**WHEREAS**, staff to the Successor Agency solicited RFP’s from interested parties and received two responses to the RFP; and

**WHEREAS**, in March 2016, the Successor Agency and Oversight Board selected the response to the RFP submitted by Mr. Bill Fox as the proposal most responsive to the RFP and requested staff to development a Purchase and Sale Agreement for consideration; and

**WHEREAS**, the proposal submitted by Mr. Fox included a higher purchase price than that of the other bid received; and

**WHEREAS**, the purchase price (the “Purchase Price”) identified by Mr. Fox (the “Purchaser”) in the response to the RFP and the price in the Purchase and Sale Agreement of \$1,529,500 represents a fair valuation under the terms and conditions specified by that certain appraisal commissioned by the Successor Agency, prepared by Integra Realty Resources dated October 14, 2015. The Successor Agency’s share of closing costs and the premium for title insurance will be paid out of a portion of the Purchase Price; and

**WHEREAS**, the Successor Agency and the Purchaser want to enter into a Purchase and Sale Agreement (the "Purchase Agreement") substantially in the form on file with the Successor Agency Secretary, whereby the Successor Agency will sell the property to Purchaser for the Purchase Price ; and

**WHEREAS**, the Purchaser proposes to construct a concrete, tilt-up building on the Property of not less than 42,300 square feet with a market value of not less than \$5,000,000 (the "Proposed Project"); and

**WHEREAS**, under the Purchase Agreement, the Purchaser must complete California Environmental Quality Act review and have the Proposed Project approved by the City of Montclair Planning Commission prior to the close of escrow; and

**WHEREAS**, the Purchaser agrees to develop the Proposed Project in accordance with such land use entitlements as the City grants for such development; and

**WHEREAS**, the Successor Agency's disposition of the Property, in a manner consistent with the Dissolution Act, the revised LRPMP, and the Purchase Agreement, will facilitate the unwinding of the dissolved Redevelopment Agency liquidating its former property in a manner aimed at maximizing property value for the benefit of the taxing entities; and

**WHEREAS**, the Successor Agency held a public hearing on June 20, 2016, where it adopted Successor Agency Resolution No. 16-04 approving Agreement No. 16-50, the Purchase Agreement; and

**WHEREAS**, the Successor Agency has submitted the Purchase Agreement to the Oversight Board for approval in accordance with Health and Safety Code Section 34181(a); and

**WHEREAS**, pursuant to Section 34181(f) of the Health and Safety Code, actions relating to disposition of property "shall be approved by resolution of the oversight board at a public meeting after at least 10 days' notice to the public of the specific proposed actions;" and

**WHEREAS**, public notice of this item was advertised as a public hearing in the *Inland Valley Daily Bulletin* newspaper on June 24, 2016; and

**WHEREAS**, on July 6, 2016, commencing at 6:00 p.m. in the Council Chambers at Montclair City Hall, the Oversight Board conducted a public hearing at which time all persons wishing to testify in connection with the item were heard.

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

**Section 1.** The Oversight Board hereby finds that the above Recitals are true and correct, and together with the Staff Report and other information provided by the Successor Agency staff, form the basis for the findings and actions set forth in this Resolution.

**Section 2.** The Oversight Board hereby approves the June 20, 2016 action of the Successor Agency to approve the sale of the property identified as APN No. 1012-141-18 located in the southeast quadrant of Ramona Avenue and State Street to Mr. Bill Fox, pursuant to the Purchase Agreement, for the value of \$1,529,500.

**Section 3.** The Oversight Board authorizes the Successor Agency Chairperson to execute the Purchase and Sale Agreement substantially in the form on file with the Secretary to the Oversight Board and Secretary to the Successor Agency..

**Section 4.** The Oversight Board hereby authorizes the Successor Agency Executive Director to make changes or amendments to the Agreement which will not substantially alter its form to implement the Agreement and to take other required actions to implement the disposition of the Property.

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

\_\_\_\_\_  
Chairman

**ATTEST:**

\_\_\_\_\_  
Secretary

I, Andrea M. Phillips, Secretary of the Oversight Board to the City of Montclair Redevelopment Agency, DO HEREBY CERTIFY that Resolution No. 16-05 was duly adopted by the Oversight Board to the City of Montclair Redevelopment Agency at a special 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. 16-51**

**PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

**SELLER:** Successor Agency to the City of Montclair  
Redevelopment Agency

**BUYER:** Bill Fox

**DATED:** \_\_\_\_\_, 2016

**(Southeast Quadrant of Ramona Avenue and State Street)**

## BASIC TERMS

Buyer: Bill Fox

Buyer's Address: Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767  
Tel. (909) 920-9962 Ext. 222  
Fax: (909) 624-1380

City: The City of Montclair

Closing Date (or Closing) Estimated to occur by 210 calendar days after the Effective Date, but not later than the Outside Date

Designated Improvements: A concrete, tilt-up building consisting of not less than 42,300 square feet. The Real Property, as improved by the Designated Improvements, shall have an estimated market value of not less than \$5,000,000, as further described in the Option Agreement

Disposition Deed: A grant deed in the form of Exhibit B hereto

Effective Date: \_\_\_\_\_, 2016 [the date as of which this Agreement has been signed by representatives of both parties]

Escrow Holder: Fidelity National Title, National Commercial Services  
21680 Gateway Center Drive, Suite 110  
Diamond Bar, CA 91765  
Direct: (909) 978-3019  
Fax: (909) 860-6329  
Attention: Mary Lou Adame, Escrow Officer  
Email: Marylou.adame@fnf.com  
(or another escrow holder mutually acceptable to Buyer and Seller)

Option Agreement An agreement in the form of Exhibit D hereto

Outside Date: 225 calendar days after the Effective Date

Planning Commission Contingency Date: 180 calendar days after the Effective Date

Purchase Price: One Million Five Hundred Twenty Nine Thousand Five Hundred Dollars (\$1,529,500.00)

Real Property: That property described in Exhibit A hereto; the subject property is sometimes referred to as APN 1012-141-18

Seller: Successor Agency to the City of Montclair Redevelopment Agency

Seller's Address: 5111 Benito Street  
Montclair, California 91763  
Attention: Marilyn Staats  
Tel. (909) 625-9412  
Email: mjstaats@cityofmontclair.org

Soil and Title Contingency  
Date: 60 calendar days after the Effective Date

Title Company: Fidelity National Title, National Commercial Services  
1300 Dove Street  
Newport Beach, CA 92660  
Tel: (800) 633-6467  
Direct: (949) 221-4763  
Attention: Curtis Taplin, Title Officer  
Email: ctma@fnf.com  
(or another title insurer mutually acceptable to Buyer and Seller)

Will Serve Contingency Date: 120 calendar days after the Effective Date

**PURCHASE AND SALE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

This **PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS** ("Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between Seller and Buyer.

**RECITALS**

**A.** Seller is the fee owner of that real property which is legally described on Exhibit A attached hereto and made a part hereof (the "Real Property"). The Real Property is unimproved.

**B.** Seller has offered to sell to Buyer the Real Property described herein for the price and subject to the terms set forth below. Buyer has considered the offer by Seller and agrees to buy from Seller the Real Property, as more specifically described below.

**C.** In addition to the Purchase Price, a material consideration to Seller in agreeing to sell the Real Property to Buyer pursuant to this Agreement and but for which Seller would not have agreed to enter into this Agreement or sell the Real Property to Buyer is the assurance by Buyer to Seller that Buyer will make the Designated Improvements to the Real Property.

**NOW, THEREFORE,** in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**1. Purchase and Sale.** Seller hereby agrees to sell the Real Property to Buyer, and Buyer hereby agrees to purchase the Real Property from Seller, on the terms and conditions set forth in this Agreement. The term Real Property is defined collectively as the following:

(a) The fee interest in the Real Property to be conveyed by a grant deed in the form of the Disposition Deed; and

(b) All personal property, equipment, supplies, and fixtures owned by Seller and located at the Real Property.

**2. Payment of Consideration.** As consideration for the sale of the Real Property from Seller to Buyer, Buyer shall, at the Closing (as defined below), pay to Seller the Purchase Price for the Real Property. Upon payment of the Purchase Price to Seller, the disposition of such moneys by Seller is a matter with which Buyer is not concerned.

**3. Escrow and Independent Consideration.**

(a) Opening of Escrow. For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that Escrow Holder receives a copy of this Agreement fully executed by Buyer and Seller. Buyer and Seller shall use their best efforts to cause the Opening of Escrow to occur on or before five (5) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or

customary supplemental escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no such instruments shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments and the terms of this Agreement, then the terms of this Agreement shall control. Without limiting the generality of the foregoing, no such instruments shall extinguish any obligations imposed by this Agreement or any other agreement between Seller and Buyer.

(b) Independent Consideration. Within three (3) days after the Effective Date, Buyer shall deliver to Seller Five Thousand and No/100 Dollars (\$5,000.00) as non-refundable independent consideration (the "Independent Consideration"). The Independent Consideration has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Buyer herein, including any and all rights granted to Buyer to terminate this Agreement under the circumstances provided for herein. Notwithstanding anything to the contrary contained in this Agreement, the Independent Consideration shall be non-refundable in all events, except for: (i) Seller's default hereunder, (ii) the failure of the Oversight Board to approve the sale of the Real Property as provided under this Agreement, and (iii) actions by the California Department of Finance which prevent the disposition of the Real Property to Buyer as provided under this Agreement. If the Closing occurs, a credit shall be applied to the Purchase Price based upon payment of the Independent Consideration.

(c) Closing. For purposes of this Agreement, the "Closing" or "Closing Date" shall be the date the Disposition Deed is recorded pursuant to applicable law in the county in which the Real Property is located. Unless changed in writing by Buyer and Seller, the Closing shall occur on the Closing Date, or as soon thereafter as the conditions precedent to closing are satisfied pursuant to Sections 6 and 7 of this Agreement. The parties acknowledge that, if conditions precedent have been satisfied pursuant to Sections 6 and 7 of this Agreement prior to 210 ten calendar days after the Effective Date, the parties may proceed to a Closing that occurs prior to the 210<sup>th</sup> calendar day after the Effective Date. If the Closing has not, for any reason, occurred by the Outside Date, then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the outside Closing Date; provided, however, that if either party is in default under this Agreement at the time of such termination, then such termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. Notwithstanding the foregoing portion of this Section 3, if the Closing occurs prior to delivery of a termination notice by either party, then neither party shall have the right to terminate this Agreement pursuant to this Section 3(c).

**4. Seller's Delivery of Real Property and Formation Documents.** Within ten (10) days after the Effective Date, Seller shall deliver to Buyer the following items (collectively, the Property Documents):

(a) Such proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company consistent with the terms of this Agreement, including without limitation approval of the Oversight Board of the sale of the Real Property by Seller to Buyer

(b) Copies of all plans, consulting reports, permits, surveys and inspections for improvements done by the City with respect to the Real Property that constitute public records;

provided that any such information as so provided shall be provided without warranty and without any representations (including without limitation regarding accuracy, completeness or suitability).

In addition, Seller shall cause Escrow Holder to obtain and deliver to Buyer a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") on or before the date which is five (5) days prior to the Soil and Title Contingency Date.

**5. Buyer's Right of Entry.** From and after the Opening of Escrow through the earlier to occur of the termination of this Agreement or the Closing Date, or as otherwise agreed in writing by Seller prior to the time entry is effected, Buyer and Buyer's employees, agents, consultants and contractors shall have the right to enter upon the Real Property during normal business hours, provided reasonable prior notice has been given to Seller.

(a) Investigation of the Real Property. In addition to the foregoing, the Buyer shall have the right, at its sole cost and expense, prior to the Closing Date, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Buyer deems necessary or appropriate, including any "Phase 1" or "Phase 2" investigations of the Real Property. If, based upon such evaluation, inspections, tests or investigation, Buyer determines that it, in its discretion, does not wish to proceed with purchase of the Real Property based upon the condition of the Real Property, Buyer may cancel this Agreement by giving written notice of termination to Seller on or before the Closing Date which specifically references this Section 5. If Buyer does not cancel this Agreement by the time allowed under this Section 5, Buyer shall be deemed to have approved the evaluation, inspections and tests as provided herein and to have elected to proceed with this transaction on the terms and conditions of this Agreement. Seller shall be provided a copy of all reports and test results provided by Buyer's Environmental Consultant promptly after receipt by the Buyer of any such reports and test results without any representation or warranty as to their accuracy or completeness.

Buyer shall bear all costs, if any, associated with restoring the Real Property to substantially the same condition prior to its testing by or on behalf of Buyer if requested to so do by Seller but excluding any latent defects or Hazardous Materials (as defined below) discovered by Buyer during its investigation of the Real Property. Buyer agrees to indemnify, protect, defend (with counsel satisfactory to Seller) and hold Seller and the Real Property free and harmless from and against all costs, claims, losses, liabilities, damages, judgments, actions, demands, attorneys' fees or mechanic's liens arising out of or resulting from any entry or activities on the Real Property by Buyer, Buyer's agents, contractors or subcontractors and the contractors and subcontractors of such agents, but in no event shall the indemnity of this Section include the discovery of pre-existing conditions by Buyer or any such liabilities, costs, etc. arising from the negligence or willful misconduct of Seller and/or its consultants. The indemnity obligations of Buyer set forth in this Section 5(a) shall survive any termination of this Agreement or the Close of Escrow.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the County, the State of California, regional governmental authority, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health

and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §6901 et seq.

(b) No Warranties as To the Real Property. The physical condition and possession of the Real Property, is and shall be delivered from Seller to Buyer in an "as is" condition, with no warranty expressed or implied by Seller, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Real Property for development purposes. In addition, Seller makes no representations, warranties or assurances concerning the Real Property, its suitability for any particular use or with regard to the approval process for entitlements as to the Real Property.

(c) Buyer Precautions after Closing. Upon and after the Closing, Buyer shall take all reasonable precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Real Property. Such precautions shall include compliance with all laws, ordinances, statutes, codes, rules, regulations, orders, and decrees of the United States, the state, the County, City, or any other political subdivision in which the Real Property is located, and of any other political subdivision, agency, or instrumentality exercising jurisdiction over the Real Property ("Governmental Requirements") with respect to Hazardous Materials.

## **6. Buyer's Conditions Precedent and Termination Right.**

(a) Conditions Precedent. The Closing and Buyer's obligation to consummate the purchase of the Real Property under this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Buyer's Contingencies"), which are for Buyer's benefit only.

(i) Title Review. Within ten (10) calendar days after the Opening of Escrow, but in no event later than the sixtieth (60<sup>th</sup>) day after the Effective Date, Seller shall cause the Title Company to deliver to Buyer a preliminary title report (the "Report") describing the title to the Real Property, together with copies of the plotted easements and the exceptions (the "Exceptions") set forth in the Report; provided that the cost of the Report shall be borne by Seller. Seller acknowledges that the Buyer's Title Policy shall include an endorsement against the effect of any mechanics' liens; Seller will provide such indemnity or other assurances as necessary to induce the Title Company to provide such endorsement. On or before the Soil and Title Contingency Date, Buyer shall have approved in writing, in Buyer's sole discretion, any matters of title disclosed by the following (collectively, the "Title Documents"): (i) the Report; (ii) the Exceptions; (iii) the legal

description of the Real Property; (iv) the Option Agreement; and (iv) any survey Buyer desires to obtain at Buyer's sole cost and expense. Buyer shall have the same rights to approve or disapprove any exceptions to title that are not created by Buyer and that come into existence after issuance of the Report but prior to Closing. The rights set forth in the Option Agreement shall be deemed to be acceptable limitations upon title. Seller shall, on or before the Closing, remove all deeds of trust, mortgages, delinquent taxes and other monetary liens (but not the lien for any real property taxes or assessments not yet delinquent).

(ii) Buyer's Title Policy. On or before the Closing, the Title Company shall, upon payment (by Buyer) of the Title Company's premium, have agreed to issue to Buyer, a standard ALTA owner's policy of title insurance ("Buyer's Title Policy") in the amount of the Purchase Price showing fee title to the Real Property vested solely in Buyer and subject only to the (i) the standard, preprinted exceptions to Buyer's Title Policy; (ii) liens to secure payment of real estate taxes or assessments not yet delinquent; (iii) matters affecting the Real Property created by or with the written consent of Buyer; and (iv) those matters specifically approved in writing by Buyer. Buyer shall have the right, at its sole cost and expense, to obtain coverage beyond that offered by a standard ALTA policy (such as an owner's extended coverage ALTA policy); provided, however, that Buyer's ability to obtain such extended coverage shall not be a Buyer's Contingency and Buyer's obligations hereunder shall in no way be conditioned or contingent upon obtaining such extended coverage. Buyer shall have sole responsibility for obtaining, and bearing the cost of, any endorsements and for any survey or other matters required by the Title Company for such extended coverage.

In the event Buyer enters into a loan agreement to generate moneys to purchase the Real Property from Seller under this Agreement, Buyer and not Seller shall be responsible for the title insurance, closing costs and any other costs, fees or expenses in relation to Buyer obtaining such loaned moneys. The sale shall be all cash to Seller.

(iii) Physical and Legal Inspections and Studies. On or before Soil and Title the Contingency Date, Buyer shall have approved in writing, in Buyer's sole and absolute discretion, the results of any physical and legal inspections, investigations, tests and studies Buyer elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; soils, seismic and geologic reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations as Buyer may elect to make or obtain.

(iv) Natural Hazard Report. Seller shall cause the Escrow Holder to provide to Buyer prior to the Soil and Title Contingency Date the Natural Hazard Report described at Section 4 of this Agreement; provided that Buyer shall bear the cost to prepare such Natural Hazard Report.

(v) Property and Formation Documents. On or before the Soil and Title Contingency Date, Buyer shall have approved in writing, in Buyer's reasonable discretion, the terms, conditions and status of all of the Property Documents.

(vi) Delivery of Documents. Seller's delivery of all documents described in Section 8, below.

(vii) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be materially true and correct as of the date made and as of the Closing.

(viii) Title Company Confirmation. The Title Company shall have confirmed that it is prepared to issue the Buyer's Title Policy consistent with the provisions of this Agreement.

(ix) Will Serve Letters. On or before the Will Serve Contingency Date, Buyer shall have obtained will serve approval letters as to water and other utility service availability to the Real Property.

(x) Planning Commission. On or before the Planning Commission Contingency Date, Buyer shall have obtained approval by the City Planning Commission for the development of a building consistent with that certain "Proposal for Property Purchase and Development" dated as of January 13, 2016 as made by Buyer to Seller, a copy of which is on file with the City Clerk of the City as a public record.

(xi) No Default. As of the Closing, Seller shall not be in default in the performance of any material covenant or agreement to be performed by Seller under this Agreement.

(b) Termination Right. Should any of Buyer's Contingencies not be met by the Outside Date, or if the Independent Consideration has not been delivered by Buyer to Seller by the time set forth therefor in Section 3(b), and Seller so informs Buyer, Buyer may, by written notice to Seller, terminate this Agreement. If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer, unless Seller is in default hereunder, in which case Seller shall pay all such fees. If Buyer has not terminated this Agreement in writing ("Termination Notice") on or before 5:00 p.m. on the Monday preceding the scheduled Closing ("Termination Notice Deadline"), then all such Buyer's Contingencies shall be deemed to have been satisfied and this Agreement shall continue pursuant to its terms.

(c) Seller's Cure Right. Buyer shall notify Seller, in Buyer's Termination Notice, of Buyer's disapproval or conditional approval of any Title Documents. Seller shall then have the right, but not the obligation, to (i) remove from title any disapproved or conditionally approved Exception(s) (or cure such other title matters that are the basis of Buyer's disapproval or conditional approval of the Title Documents) within five (5) business days after Seller's receipt of Buyer's Termination Notice, or (ii) provide assurances reasonably satisfactory to Buyer that such Exception(s) will be removed (or other matters cured) on or before the Closing. With respect to any such Exception, it shall be sufficient for purposes hereof for Seller to commit in writing, within the applicable period, to remove such Exception at or before the Closing. Seller's failure to remove such Exception after committing to do so shall be a default hereunder. An Exception shall be deemed removed or cured if Seller furnishes Buyer with evidence that the Title Company will issue the Buyer's Title Policy, as defined herein, at the Closing deleting such Exception or providing an endorsement (at Seller's expense) reasonably satisfactory to Buyer concerning such Exception. If Seller cannot or does not remove or agree to remove any of the disapproved Exception(s) (or cure other matters) within such five (5) business day period, Buyer shall have three (3) business days after the expiration of such five (5) business day period to give Seller written notice that Buyer

elects to proceed with the purchase of the Real Property subject to the disapproved Title Document(s), it being understood that Buyer shall have no further recourse against Seller for such disapproved Title Exception(s).

7. **Seller's Conditions Precedent and Termination Right.** The Closing and Seller's obligations with respect to the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following condition precedent ("Seller's Contingencies"), which are for Seller's benefit only:

(a) **Completion of Title Review.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has completed its review of title and that the condition of title satisfactory.

(b) **Confirmation Concerning Site.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has reviewed the condition of the Real Property, including without limitation concerning Hazardous Materials, zoning and suitability, and approves the condition of the Real Property.

(c) **Confirmation Regarding Buyer's Title Policy.** Seller shall have received written confirmation from Buyer on or before the Soil and Title Contingency Date that Buyer has approved a pro forma title policy.

(d) **Delivery of Documents.** Buyer's delivery of all documents described in Section 9(a), below.

Should any of Buyer's Contingencies not be met by the Outside Date and Buyer has so informed Seller, Seller may, by written notice to Buyer, terminate this Agreement. If this Agreement is so terminated, then (except to the extent expressly allocated to one party hereto by this Agreement) any escrow, title or other cancellation fees shall be paid by Buyer.

8. **Seller's Deliveries to Escrow Holder.**

(a) **Seller's Delivered Documents.** At least one (1) business day prior to the Closing Date, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Seller's Delivered Items"):

(i) **Deed.** The Disposition Deed.

(ii) **Option Agreement.** The Option Agreement.

(iii) **FIRPTA/Tax Exemption Forms.** The Transferor's Certification of Non-Foreign Status in the form attached hereto as Exhibit C (the "FIRPTA Certificate"), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable (the "California Exemption Certificate").

(iv) **Hazard Disclosure Report.** Unless earlier delivered to Buyer, Seller shall cause Escrow Holder to obtain and deliver to Buyer, at Seller's cost, a Natural Hazard Report as provided for under Sections 1102 and 1103 of the California Civil Code (the "Natural Hazard Report") before the Closing.

(v) Possession of Real Property. Possession of the Real Property free of any tenancies or occupancy.

(vi) City. Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company which are consistent with the terms of this Agreement.

(vii) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

(b) Failure to Deliver. Should any of Seller's Delivered Items not be timely delivered to Escrow, Buyer may, by written notice to Seller, terminate this Agreement; provided, however, that Buyer may (but shall not be obligated to) in such notice provide Seller with five (5) business days to deliver all of Seller's Delivered Items. If Buyer's notice provides Seller such five (5) business days to deliver Seller's Delivered Items, and if Seller's Delivered Items are not delivered within such period, then this Agreement shall automatically terminate without further action or notice. In the event of any such termination, any cash deposited by Buyer shall immediately be returned to Buyer. Under no circumstances shall Buyer have any responsibility to or duty to pay consultants or real estate brokers retained by Seller, Seller being solely responsible in connection with any such contractual arrangements of Seller.

9. Buyer's Deliveries to Escrow. At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate ("Buyer's Delivered Items"):

(a) Purchase Price. The Purchase Price, less the Independent Consideration theretofore paid to Seller, and such additional funds as are necessary to pay Buyer's closing costs set forth in Section 10(b) herein. In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3-1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(b) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 593 to Title Company at or immediately after Closing.

(b) Change of Ownership Report. One (1) original Preliminary Change of Ownership Report.

(c) Final Escrow Instructions. Buyer's final written escrow instructions to close escrow in accordance with the terms of this Agreement.

(d) Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and to consummate the transaction contemplated hereby as may be reasonably requested by Seller or the Title Company.

(e) Further Documents or Items. Any other documents or items reasonably required to close the transaction contemplated by this Agreement as determined by the Title Company.

**10. Costs and Expenses.**

(a) Seller's Costs. If the transaction contemplated by this Agreement is consummated, then Seller shall be debited for and bear the following costs: (i) costs and charges associated with the removal of encumbrances; (ii) Seller's share of prorations; and (iii) costs, if any, allocable to Seller under this Agreement and costs for such services as Seller may additionally request that Escrow perform on its behalf (which foregoing items collectively constitute "Seller's Costs and Debited Amounts").

(b) Buyer's Costs. If the transaction contemplated by this Agreement is consummated, then Buyer shall bear the following costs and expenses: (i) the Escrow Holder's fee; (ii) Buyer's share of prorations, (iii) the premium for an owner's policy of title insurance which, at the election of Buyer, will be an ALTA owner's extended coverage policy of title insurance and the cost for any survey required in connection with the delivery of an ALTA owner's extended coverage policy of title insurance; (iv) documentary recording fees, if any; (v) documentary transfer tax, if any; (vi) costs, if any, for such services as Buyer may additionally request that Escrow perform on its behalf; and (vii) any costs associated with Buyer borrowing money in order to pay to Seller the Purchase Price (collectively, "Buyer's Costs and Debited Amounts").

(c) Generally. Each party shall bear the costs of its own attorneys, consultants, and real estate brokers in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated hereby. Buyer represents to Seller that Buyer and not Seller shall be solely responsible for payment in connection with services of any consultants, finders or real estate brokers engaged by Buyer in connection with the purchase of the Real Property from the Seller. Seller represents to Buyer that Seller has not engaged the services of any consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer.

**11. Prorations; Withholding.**

(a) All revenues (if any) and expenses relating to the Real Property (including, but not limited to, property taxes, utility costs and expenses, water charges and sewer rents and refuse collection charges) shall be prorated as of the Closing Date; provided that all delinquent taxes shall be satisfied at the expense of Seller. Not less than five (5) business days prior to the Closing, Seller shall deliver to Buyer a tentative schedule of prorations for Buyer's approval (the "Proration and Expense Schedule"). If any prorations made under this Section shall require final adjustment after the Closing, then the parties shall make the appropriate adjustments promptly when accurate information becomes available and either party hereto shall be entitled to an adjustment to correct the same. Any corrected or adjustment proration shall be paid promptly in cash to the party entitled thereto.

(b) In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code (the "Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Title Company shall withhold three and one-third percent (3-1/3%) of

the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code. (ii) Buyer shall deliver three (3) duly executed copies of California Form 593 to Title Company at or immediately after Closing, (iii) two (2) copies of California Form 593 shall be delivered by Title Company to Seller, and (iv) on or before the 20<sup>th</sup> day of the month following the month title to the Real Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Title Company shall remit such funds withheld from the Purchase Price, together with one (1) copy of California Form 593 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Title Company as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 593), to the California Franchise Tax Board.

**12. Closing Procedure.** When the Title Company is unconditionally prepared (subject to payment of the premium therefor) to issue the Buyer's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Disposition Deed and the Option Agreement to be recorded pursuant to applicable law in the county in which the Real Property is located and obtain conformed copies thereof for distribution to Buyer and Seller.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all Buyer's Costs and Debited Amounts, Seller's Costs and Debited Amounts and General Expenses, prorate matters and withhold funds as provided herein. The Purchase Price, less any applicable debits or credits (as provided herein) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions). Escrow Holder shall disburse to City from moneys disbursed to Escrow Holder by Buyer the Building Permit Amount concurrent with Closing to be paid to an account designated by City or Seller in writing to Escrow Holder Seller authorizes Escrow Holder to request demands for payment and to make such payments from the Purchase Price (or such other funds, if any, as are advanced by Seller) to defray the cost of removing deeds of trust, liens and other encumbrances (but not for the Building Permit Amount or any other obligations of Buyer).

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller a conformed copy of the Disposition Deed, the original Option Agreement, and documents, if any, recorded on behalf of any lender, as duly recorded among the official land records of the County of San Bernardino, and a copy of each other document (or copies thereof) deposited into Escrow by Buyer pursuant hereto.

(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), and a conformed copy of each of the Disposition Deed as duly recorded among the official land records of the County of San Bernardino, the Natural Hazard Report, a copy of the Option Agreement, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer's Title Policy to Buyer.

(f) Closing Statement. Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party.

(g) Informational Reports. Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.

(h) Possession. Possession of the Real Property shall be delivered to Buyer at the Closing.

**13. Representations and Warranties.**

(a) Seller's Representations and Warranties. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Real Property, Seller makes the following representations and warranties as of the Effective Date and as of the Closing, each of which is material and is being relied upon by Buyer (and the truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder), and all of which are material inducements to Buyer to enter into this Agreement (and but for which Buyer would not have entered into this Agreement) and shall survive Closing; provided that each of the representations and warranties of Seller is based upon the information and belief of the City Manager of City:

(i) Seller has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and, subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, to consummate the transaction contemplated.

(ii) Subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, all requisite action (corporate, trust, partnership or otherwise) has been taken by Seller in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) Subject to the approval of the Oversight Board and, as may be applicable, the California Department of Finance, the individual executing this Agreement and the instruments referenced herein on behalf of Seller has the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

(iv) Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Seller is a party or that affect the Real Property, including, but not limited to, any of the Title Documents or the Property Documents.

(v) There is no pending litigation nor, to the best of Seller's knowledge, threatened litigation, which does or will adversely affect the right of Seller to convey the Real Property. There are no claims which have been received by Seller that have not been disclosed to Buyer.

(vi) Seller has made no written or oral commitments to or agreements with any governmental authority or agency materially and adversely affecting the Real Property, or any part hereof, or any interest therein, which will survive the Closing.

(vii) There are no leases or rental agreements in effect as to the Real Property.

(viii) Seller is not in default of its obligations under any contract, agreement or instrument to which Seller is a party pertaining to the Real Property.

(ix) There are no mechanics', materialmen's or similar claims or liens presently claimed or which will be claimed against the Real Property for work performed or commenced for Seller or on Seller's behalf prior to the date of this Agreement.

(x) There are no undisclosed contracts, licenses, commitments, undertakings or other written or oral agreements for services, supplies or materials concerning the use, operation, maintenance, or management of the Real Property that will be binding upon Buyer or the Real Property after the Closing. There are no oral contracts or other oral agreements for services, supplies or materials, affecting the use, operation, maintenance or management of the Real Property.

(xi) There are not as of the Effective Date, nor will there be as of the Closing, any written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights or interest of any nature in and to the Real Property or any part thereof, and no person other than Buyer shall have any right of possession to the Real Property or any part thereof as of the Closing.

(xii) No person, excepting Seller, has possession or any rights to possession of the Real Property or portion thereof.

(b) Subsequent Changes to Seller's Representations and Warranties. If, prior to the Closing, Buyer or Seller should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Seller set forth herein incorrect or untrue in any respect (collectively, the "Seller Representation Matter"), then the party who has learned, discovered or become aware of such Representation Matter shall promptly give written notice thereof to the other party and Seller's representations and warranties shall be automatically limited to account for the Representation Matter. Buyer shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Seller if Buyer reasonably disapproves any such change. If Buyer does not elect to terminate this Agreement, Seller's representation shall be qualified by such Seller Representation Matter and Seller shall have no obligation to Buyer for such Seller Representation Matter.

(c) Buyer's Representations and Warranties. In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Real Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller (and the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder), and all of which shall survive Closing:

(i) Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.

(ii) All requisite action has been taken by Buyer in connection with entering into this Agreement and the instruments referenced herein; and, by the Closing, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby.

(iii) The individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.

(iv) Neither the execution and delivery of this Agreement and the documents and instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement and the documents and instruments referenced herein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, partnership agreement, lease or other agreement or instrument to which Buyer is a party or by which any of Buyer's properties are bound.

(d) Subsequent Changes to Buyer's Representations and Warranties. If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.

**14. Fair Value Price.** Each of Buyer and Seller agree and acknowledge that the Purchase Price represents a fair value price for the Real Property. At such time as Buyer makes improvements to the Real Property, the costs for planning, designing, and constructing such improvements shall be borne exclusively by the Buyer and the Buyer shall construct or cause to be constructed such improvements in compliance with all the zoning, planning and design review requirements of the Montclair Municipal Code, and all nondiscrimination, labor standard, and wage rate requirements to the extent such labor and wage requirements are applicable.

Buyer, including but not limited to its contractors and subcontractors, shall be responsible to comply with Labor Code Section 1720, et seq., if applicable, and its implementing regulations, regarding the payment of prevailing wages (the "State Prevailing Wage Law"), if applicable, and, if applicable, federal prevailing wage law ("Federal Prevailing Wage Law" and, together with State Prevailing Wage Law, "Prevailing Wage Laws") with regard to the construction of improvements to the Real Property, but only if and to the extent such sections are applicable to the development of the Real Property. Insofar as the parties are in agreement that Buyer is paying a fair market price for the Real Property, the parties understand that the payment of prevailing wages will not be required.

In any event, Buyer shall be solely responsible for determining and effectuating compliance with the Prevailing Wage Laws, neither Seller nor City makes any final representation as to the applicability or non-applicability of the Prevailing Wage Laws to improvements to the Real Property, or any part thereof. Buyer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold each of Seller and City, and their respective officers, employees, agents and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Buyer's acts or omissions pertaining to the compliance with the Prevailing Wage Laws as to the Real Property. This Section 14 shall survive Closing.

**15. General Provisions.**

(a) Condemnation. If any material portion of the Real Property shall be taken or appropriated by a public or quasi-public authority exercising the power of eminent domain, Buyer shall have the right, at its option, to (i) terminate this Agreement or (ii) proceed with the purchase of the Real Property and receive all of the award or payment made in connection with such taking.

(b) Notices. All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party as provided in the Basic Terms section above, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), sent by certified mail, postage prepaid, return receipt requested, or sent by facsimile transmission (provided that a successful transmission report is received). All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice. The providing of copies of Notices to the parties' respective counsels is for information only, is not required for valid Notice and does not alone constitute Notice hereunder.

(c) Brokers. Seller assumes sole responsibility for any consultants or brokers ("Seller's Agents") it may have retained in connection with the sale of the Real Property (and Buyer shall have no responsibility in connection with such matters). Seller represents to Buyer that Seller has engaged no consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Seller agrees to and does hereby indemnify and hold the Buyer free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Seller in connection with this Agreement. Buyer assumes sole responsibility for any consultants or brokers ("Buyer's Agents") it may have retained in connection with the purchase of the Real Property (and Seller shall have no responsibility in connection with such matters). Buyer represents to Seller that Buyer has engaged no consultants, finders or real estate brokers in connection with the sale of the Real Property to the Buyer, and there are no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement. Buyer agrees to and does hereby indemnify and hold the Seller free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the Buyer in connection with this Agreement.

(d) [Intentionally Omitted].

(e) Waiver, Consent and Remedies. Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other. Except as otherwise specified herein, either party hereto may pursue any one or more of its rights, options or remedies hereunder or may seek damages or specific performance in the event of the other party's breach hereunder, or may pursue any other remedy at law or equity, whether or not stated in this Agreement.

(f) Cooperation. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof and, following Closing.

(g) Remedies. Without limitation as to the availability of other remedies, this Agreement may be enforced by an action for specific enforcement.

(h) Time. Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.

(i) Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.

(j) Captions. Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

(k) Obligations to Third Parties. City shall be deemed to be a third party beneficiary of this Agreement. Excepting only for City, the execution and delivery of this

Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.

(l) Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

(m) Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

(n) Applicable Law. This Agreement shall be governed by and construed in accordance with the local law of the State of California.

(o) Exhibits and Schedules. The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

(p) Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement is executed without reliance on any oral or written statements, representations or promises of any kind which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

(q) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

(r) Assignment. Buyer may not assign its rights under this Agreement without the prior written consent of Seller; provided, however, that Buyer may assign its rights under this Agreement to any limited liability company in which Bill Fox owns no less than fifty percent (50%) of the equity ("Permitted Assignee") without the prior written consent of Seller so long as the Permitted Assignee agrees in writing enforceable by Seller that Permitted Assignee will be deemed Buyer under this Agreement (including without limitation the attachments hereto) for all purposes and will succeed to all rights and obligations of Buyer remaining as of the date Seller receives written notice of such assignment together with evidence demonstrating agreement of the Permitted Assignee to be bound to Seller hereunder. In the event of an assignment to a Permitted Assignee which complies with the foregoing portion of this paragraph (r) of Section 15, upon notification of Seller to such effect, Bill Fox shall have no personal liability to Seller and its agents, representative or assignees as Buyer. Seller may assign its rights under this Agreement to City without the consent of Buyer; provided that (i) City shall have those rights as set forth in the Option Agreement without regard to whether any assignment of rights of the Seller takes place, (ii) Seller shall remain liable for its obligations hereunder, and (iii) the Purchase Price shall be paid to Seller.

[signatures begin on the following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

**“SELLER”**

**SUCCESSOR AGENCY TO THE CITY OF  
MONTCLAIR REDEVELOPMENT AGENCY, a  
public entity, corporate and politic**

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

Paul M. Eaton  
Mayor

**“BUYER”**

**BILL FOX**

By:  \_\_\_\_\_  
Name: Bill Fox

Acceptance by Escrow Holder:

Fidelity National Title, National Commercial Services hereby acknowledges that it has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between the Successor Agency to the City of Montclair Redevelopment Agency, a public entity, corporate and politic ("Seller"), and Bill Fox ("Buyer") and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2016

FIDELITY NATIONAL TITLE,  
NATIONAL COMMERCIAL SERVICES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of San Bernardino, described as follows:

[legal description: to come].

APN: 1012-141-18

**EXHIBIT B**

**DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767  
Attn: Bill Fox

APN: 1012-141-18

[Space above for recorder.]

**DOCUMENTARY TRANSFER TAX**

\$ \_\_\_\_\_  
\_\_\_\_\_ computed on the consideration or value of  
property conveyed; OR  
\_\_\_\_\_ computed on the consideration or value less  
liens or encumbrances remaining at time of sale.

\_\_\_\_\_  
Signature of Declarant or Agent determining tax - Firm  
Name

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency to the City of Montclair Redevelopment Agency, a public entity, corporate and politic ("Grantor"), hereby grants to [Bill Fox] that certain real property located in the County of San Bernardino, State of California, more particularly described on **Attachment No. 1** attached hereto and incorporated herein by this reference (the "Property"), subject to existing easements, restrictions and covenants of record.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of \_\_\_\_\_, 201\_\_.

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

By: \_\_\_\_\_  
Name: Paul M. Eaton  
Its: Mayor

**ATTACHMENT NO. 1 TO GRANT DEED**

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of California, County of San Bernardino, described as follows:

[legal description: to come].

APN: 1012-141-18

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public.  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

- Partner(s)       Limited       General
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
 Name Of Person(s) Or Entity(ies)  
 \_\_\_\_\_

\_\_\_\_\_  
 Title Or Type Of Document

\_\_\_\_\_  
 Number Of Pages

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 Signer(s) Other Than Named Above

EXHIBIT C

FIRPTA CERTIFICATE

**TRANSFEROR'S CERTIFICATE OF NON-FOREIGN STATUS**

To inform [Bill Fox] ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended ("Code") will not be required upon the transfer of certain real property to the Transferee by the Successor Agency to the City of Montclair Redevelopment Agency (the, "Transferor"), the undersigned hereby certifies the following:

1. The Transferor is not a foreign person or citizen, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);

2. The Transferor's social security number or U.S. employer identification number is as follows: \_\_\_\_\_.

3. The Transferor's home or office address is:

\_\_\_\_\_  
\_\_\_\_\_

The Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalty of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document.

\_\_\_\_\_  
Successor Agency to the City of Montclair  
Redevelopment Agency

**EXHIBIT D**  
**OPTION AGREEMENT**

**Recording Requested By  
And When Recorded Mail To:**

City of Montclair  
5111 Benito Street  
Montclair, California 91763  
Attention: Marilyn Staats

APN: 1012-14-18

Space above for Recorder's Use

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**OPTION AGREEMENT**

This **OPTION AGREEMENT** ("Option Agreement") is entered into as of \_\_\_\_\_, 201\_, by and between the **CITY OF MONTCLAIR**, a municipal corporation ("City"), and **[BILL FOX]** (the "Owner" and, together with City, the "Parties").

**RECITALS**

A. Owner has purchased that certain real property commonly known as \_\_\_\_\_, Assessor's Parcel No. 1012-14-18, Montclair, California, 91763, and more particularly described in Exhibit "A" attached hereto and incorporated herein ("Property"), under that certain unrecorded "Purchase and Sale Agreement and Joint Escrow Instructions" dated as of \_\_\_\_\_, 2016 (the "Purchase Agreement") by and between Owner and the Successor Agency to the City of Montclair Redevelopment Agency ("Successor Agency"). A copy of the Purchase Agreement is on file with Successor Agency as a public record. The Purchase Agreement was approved by the Successor Agency and the Oversight Board to the Successor Agency to the City of Montclair Redevelopment Agency (the "Oversight Board").

B. As a material consideration but for which Successor Agency and the Oversight Board would not have approved the sale of the Property to Owner, Owner agreed in the Purchase Agreement to make certain improvements to the Property; the provision of such improvements will result in the generation of taxes to recipients of property taxes and other taxes. To assure that the Owner provides the improvements, and to provide City with rights to acquire the Property on the terms and conditions set forth herein if the Owner does not improve the Property, the Parties agreed to provide to City an option to purchase the Property from Owner on the terms and conditions set forth herein.

C. For the sum of One Dollar (\$1.00) and other valuable consideration the receipt of which is acknowledge by Owner, Owner grants to City an option to purchase the Property on the terms and conditions set forth hereinbelow. For purposes of this Option Agreement, "Property" shall also be deemed to include any and all improvements located on the real property.

**NOW, THEREFORE,** in consideration of the foregoing, and the mutual covenants and conditions contained herein, the parties hereto agree as follows:

**1. Grant of Option.** Owner grants to City an option ("Option") to purchase the Property on the terms and conditions set forth in this Option Agreement. The purchase price payable by City to the Owner for the Property shall be equal to (i) the "Purchase Price" as defined in the Purchase Agreement, plus (ii) expenditures made by Owner to unrelated third parties for construction of improvements made to the Property through the completion of the sale to City hereunder (herein, the "Acquisition Price"). Subject to the terms hereof, the Option may be exercised by City at any time on or after the date that is the one (1) year anniversary of the Outside Date (as defined under the Purchase Agreement) (the "Performance Deadline") until the date that is the four (4) year anniversary of the Outside Date (the "Option Termination Date"), but only if the Owner has failed to cause the development on the Property of a building or buildings consisting of not less than forty two thousand three hundred (42,300) square feet (the "Minimum Required Square Footage") which when combined with any other improvements to the Property have an estimated market value of not less than Five Million Dollars (\$5,000,000.00)(the "Minimum Required Value"). In the event that as of the Performance Deadline the Designated Improvements (as defined in the Purchase Agreement) have not been completed so as to satisfy each of the Minimum Required Square Footage and the Minimum Required Value, City, shall have the right, at its option, to purchase the Property for the Acquisition Price in accordance with this Option Agreement. City shall act reasonably in determining whether improvements have been accomplished which satisfy each of the Minimum Required Square Footage and the Minimum Required Value.

If City notifies Owner, at the address of record for Owner in the Purchase Agreement or such other address as Owner may provide in writing to City from time to time, that City elects to acquire the Property pursuant to this Section 1, the exercise of the Option shall be implemented as set forth in Section 3 hereof. Owner agrees to cooperate in implementing the acquisition of the Property by City under this Section 1.

In the event Owner completes the construction of Designated Improvements or otherwise improves the Property in a manner that satisfies the Minimum Required Square Footage and the Minimum Required Value before the Performance Deadline, City shall, upon receipt of a written request therefor from Owner, execute a writing which extinguishes this Option Agreement, including without limitation the Option; while it is intended that a writing to extinguish the Option Agreement

would be in recordable form, upon execution of such a writing by City, such writing shall be enforceable as to City without regard to whether such writing is recorded.

The Option created hereby shall be irrevocable by Owner and shall be binding upon the successors and assigns of Owner. City shall have the right of specific performance to enforce the terms of this Option Agreement.

**2. Term and Consideration for Option.** The term of the Option ("Option Term") shall commence on the date of this Option Agreement, and shall expire upon the Option Termination Date if not sooner extinguished pursuant to the terms hereof.

**3. Exercise of Option.** The Option may be exercised by City's delivery to Owner of written notice of such exercise ("Exercise Notice") in the event the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value have not been completed prior to the Performance Deadline. Following receipt of the Exercise Notice, Owner shall have the right, but not the obligation, to complete the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within forty-five (45) days of receipt of such notice. If Owner completes the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within such 45-day period, then this Option Agreement and the Option shall be terminated and City shall have no right pursuant to this Option Agreement to purchase the Property pursuant to the terms hereof. If Owner does not so complete the Designated Improvements or other improvements satisfying each of the Minimum Required Square Footage and the Minimum Required Value within forty-five (45) days of receipt of such notice, the Exercise Notice shall become effective on the first business day following such 45-day period.

**4. Escrow and Completion of Sale.** Within five (5) days after City has given the Exercise Notice, or as soon thereafter as reasonably practicable, an escrow shall be opened with an escrow company mutually acceptable to City and Owner for the conveyance of the Property to City. City shall deposit the Option Price in escrow not later than one (1) business day prior to the anticipated close of escrow date. City's obligation to close escrow shall be subject to City's approval of a then-current preliminary title report and, at City's option, environmental and other site testing. Any exceptions shown on such preliminary title report created on or after the Owner's acquisition of the Property shall be removed by Owner at its sole expense prior to the close of escrow pursuant to this Section 4 unless such exception(s) is(are) accepted by City in its reasonable discretion; provided, however, that City shall accept the following exceptions to title: (i) current taxes not yet delinquent, (ii) matters affecting title existing on the date of Owner's acquisition of the Property, (iii) liens and encumbrances in favor of City, and (iv) matters shown as printed exceptions in the standard form ALTA owner's policy of title insurance. The parties shall each be responsible for one-half of the escrow fees, documentary transfer taxes, recording fees and any other costs and expenses of the escrow, and, if applicable, the Owner shall be responsible for the cost of an owner's extended coverage ALTA owner's policy of title insurance. City shall have thirty (30) days after exercise of the Option to enter upon the Property to conduct any tests, inspections, investigations, or studies of the condition of the Property. Owner shall permit City access to the Property for such purposes. City shall indemnify, defend, and hold harmless Owner and its officers, directors, shareholders, partners, employees, agents, and representatives from and against all claims, liabilities, or damages, and including expert witness fees and reasonable attorney's fees and costs, caused by City's activities with respect to or arising out of such testing, inspection, or investigatory activity on the Property.

Escrow shall close promptly after acceptance by City of the condition of title and the physical and environmental condition of the Property.

**5. Failure to Exercise Option.** If the Option is not exercised by City in the manner provided in Sections 3 and 4 above on or before the Option Termination Date, the Option shall automatically terminate. Notwithstanding anything to the contrary contained in this Option Agreement, if Owner completes the Designated Improvements or otherwise improves the Property in a manner that satisfies each of the Minimum Required Square Footage and the Minimum Required Value after the Performance Deadline but before City has exercised the Option pursuant to the terms hereof, then this Option Agreement and the option shall be terminated and City shall have no right to purchase the Property by virtue of this Option Agreement.

**6. Assignment and Nomination.** City shall not assign its rights and interest hereunder without the approval of the Owner, which may be given or withheld in Owner's sole and absolute discretion, excepting that upon exercise by City of the Option, City may nominate another person or entity to acquire title to the Property, and the identity of such nominee shall not be subject to the approval of the Owner.

**7. Title.** Following the date hereof, except to secure purchase money for the acquisition of the Property by Owner under the Purchase Agreement and as necessary to fund improvements to the Property, Owner agrees not to cause, and shall use commercially reasonable efforts not to permit, any lien, easement, encumbrance or other exception to title to be recorded against the Property without City's prior written approval, such approval not to be unreasonably withheld.

**8. Representations and Warranties of Owner.** Owner hereby represents, warrants and covenants to City as follows, which representations and warranties shall survive the exercise of the Option and the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by Owner hereunder, upon execution and delivery thereof by Owner, will have been duly entered into by Owner, and will constitute legal, valid and binding obligations of Owner;

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which Owner is a party or by which it is bound; and

(c) Owner shall pay, prior to delinquency, any and all real property taxes and assessments which affect the Property.

Owner agrees to indemnify, protect, defend, and hold City and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of Owner, shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

**9. Representations and Warranties of City.** City hereby represents and warrants and covenants to Owner, as follows, which representations and warranties shall survive the Close of Escrow:

(a) that this Option Agreement and the other documents to be executed by City hereunder, upon execution and delivery thereof by City, will have been duly entered into by City, and will constitute legal, valid and binding obligations of City, and

(b) neither this Option Agreement, nor anything provided to be done under this Option Agreement, violates or shall violate any contract, document, understanding, agreement or instrument to which City is a party or by which it is bound.

City agrees to indemnify, protect, defend, and hold Owner and the Property harmless from and against any damage, claim, liability, or expense of any kind whatsoever (including, without limitation, reasonable attorneys' fees and fees of expert witnesses) arising from or in connection with any breach of the foregoing representations, warranties and covenants. Such representations and warranties of City, and any other representations and warranties of City contained elsewhere in this Option Agreement shall be true and correct on and as of the date of this Option Agreement and on and as of the date of the Close of Escrow.

## **10. General Provisions.**

**10.1 Paragraph Headings.** The paragraph headings used in this Option Agreement are for purposes of convenience only. They shall not be construed to limit or extend the meaning of any part of this Option Agreement.

**10.2 Notices.** Any notice, demand, approval, consent, or other communication required or desired to be given under this Option Agreement shall be in writing and shall be either personally served, sent by telecopy, mailed in the United States mails, certified, return receipt requested, postage prepaid, or sent by other commercially acceptable means, addressed to the party to be served with the copies indicated below, at the last address given by that party to the other under the provisions of this section. All communications shall be deemed delivered at the earlier of actual receipt, the next business day after deposit with Federal Express or other overnight delivery service or two (2) business days following mailing as aforesaid, or if telecopied, when sent, provided a copy is mailed or delivered as provided herein:

**To Owner:** Bill Fox  
450 E. Foothill Blvd.  
Pomona, CA 91767

**To City:** City of Montclair  
5111 Benito Street  
Montclair, California 91763  
Attention: City Clerk

**10.3 Binding Effect.** The terms, covenants and conditions of this Option Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

**10.4 Entire Agreement.** This Option Agreement sets forth the entire agreement between the parties hereto respecting the Option, and supersedes all prior negotiations and agreements, written or oral, concerning or relating to the subject matter of this Option Agreement.

**10.5 California Law.** This Option Agreement shall be governed by the laws of the State of California and any question arising hereunder shall be construed or determined according to such laws.

**10.6 Time of the Essence.** Time is of the essence of each and every provision of this Option Agreement.

**10.7 Counterparts.** This Option Agreement may be signed by the parties hereto in duplicate counterparts which together shall constitute one and the same agreement between the parties and shall become effective at such time as both of the parties shall have signed such counterparts.

**10.8 Interpretation.** This Option Agreement shall be interpreted in a manner which recognizes the purposes set forth in the Recitals hereto.

**10.9 Relationship Between the Parties.** Seller and Buyer are not partners or joint venturers. City is not a partner or joint venturer of either Seller or Buyer.

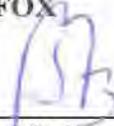
**10.10 Computation of Time.** All periods of time referred to in this Option Agreement shall include all Saturdays, Sundays and state or national holidays, unless the period of time is specified as business days (which shall not include Saturdays, Sundays and state or national holidays), provided that if the date or last date to perform any act or give any notice with respect to this Option Agreement shall fall on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

**10.11 Definition of Terms.** Terms not otherwise defined in this Option Agreement are defined in the Purchase Agreement.

IN WITNESS WHEREOF, this Option Agreement is executed by the parties hereto on the date first above written.

**OWNER:**

**BILL FOX**

By:  \_\_\_\_\_  
Bill Fox

**CITY:**

**CITY OF MONTCLAIR,**  
a municipal corporation

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**EXHIBIT "A" TO OPTION AGREEMENT**

**LEGAL DESCRIPTION**

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

[to come].

APN: 1012-14-18

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF Los Angeles )

)  
) ss.  
)

On May 27, 2016, before me, Megan Jena Morris, Notary Public.  
(Print Name of Notary Public)

personally appeared Bill Fox

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal.

Megan Jena Morris  
Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

- Individual
- Corporate Officer

Title(s)

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

Signer is representing:  
Name Of Person(s) Or Entity(ies)

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
Title Or Type Of Document

\_\_\_\_\_  
Number Of Pages

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
Signer(s) Other Than Named Above

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public.  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

- Partner(s)       Limited       General
- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

\_\_\_\_\_  
 Number Of Pages

Signer is representing:  
 Name Of Person(s) Or Entity(ies)

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

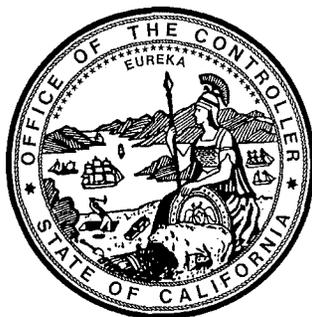
\_\_\_\_\_  
 Signer(s) Other Than Named Above

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

Review Report

**SUCCESSOR AGENCY REVIEW**

*February 1, 2012; through December 31, 2014*



**BETTY T. YEE**  
California State Controller

May 2016



**BETTY T. YEE**  
California State Controller

May 31, 2016

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

Edward C. Starr, City Manager  
City of Montclair/Successor Agency  
5111 Benito Street  
Montclair, CA 91763

Dear Mr. Starr:

The State Controller's Office (SCO) reviewed the Successor Agency to the City of Montclair Redevelopment Agency's records for asset transfers that were not made pursuant to its Recognized Obligation Payment Schedules approved by the Department of Finance beginning February 1, 2012, through December 31, 2014. Such transfers are unallowable and the Controller may order the prompt return of the assets to the Successor Agency.

We also followed up on the Orders of the Controller as issued in the SCO's City of Montclair Redevelopment Agency Asset Transfer Review Report issued on March 6, 2013. The Controller ordered the City of Montclair and the Montclair Housing Corporation to turn over \$26,632,632 in unallowable transfers to the Successor Agency.

Our review of the Successor Agency's records did not identify any unallowable transfers during the review period. Furthermore, our follow-up review of the City and the Montclair Housing Corporation's compliance with the Orders of the Controller found that the City and the Montclair Housing Corporation complied with the order.

If you have any questions, please contact Elizabeth González, Bureau Chief, by telephone at (916) 324-0622 or by email at [egonzalez@sco.ca.gov](mailto:egonzalez@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, which appears to read "Jeffrey V. Brownfield". The signature is written in a cursive, flowing style.

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/lb

Attachment

cc: Richard J. Chivaro, Chief Legal Counsel  
State Controller's Office  
Elizabeth González, Bureau Chief  
Division of Audits, State Controller's Office  
Reginald Nidoy, Audit Manager  
Division of Audits, State Controller's Office  
Claudia Corona, Auditor-in-Charge  
Division of Audits, State Controller's Office  
Donald Parker, CPA, Finance Director  
City of Montclair/Successor Agency  
Oscar Valdez, Auditor-Controller/Treasurer/Tax Collector  
San Bernardino County  
William Ruh, Chairman, Oversight board  
Montclair Redevelopment Successor Agency  
David Botelho, Program Budget Manager  
California Department of Finance

# Contents

## Review Report

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# Review Report

## Summary

The State Controller's Office (SCO) reviewed the Successor Agency to the City of Montclair Redevelopment Agency's records for asset transfers that were not made pursuant to its Recognized Obligation Payment Schedules approved by the Department of Finance beginning February 1, 2012, through December 31, 2014. Such transfers are unallowable and the Controller may order the prompt return of the assets to the Successor Agency.

We also followed up on the Orders of the Controller as issued in the SCO's City of Montclair Redevelopment Agency Asset Transfer Review Report issued on March 6, 2013. The Controller ordered the City of Montclair and the Montclair Housing Corporation to turn over \$26,632,632 in unallowable transfers to the Successor Agency.

Our review of the Successor Agency's records did not identify any unallowable transfers during the review period. Furthermore, our follow-up review of the City and the Montclair Housing Corporation's compliance with the Orders of the Controller found that the City and the Montclair Housing Corporation complied with the order.

## Background

In January of 2011, the Governor of the State of California proposed statewide elimination of Redevelopment Agencies (RDA) beginning with the fiscal year (FY) 2011-12 State budget. The Governor's proposal was incorporated into Assembly Bill 26, Chapter 5, Statutes of 2011, First Extraordinary Session (ABX1 26), which was passed by the California State Legislature, and signed into law by the Governor on June 28, 2011.

ABX1 26 was codified in the Health and Safety (H&S) Code beginning with section 34161.

A California Supreme Court decision on December 28, 2011 (*California Redevelopment Association et al. v. Matosantos*), upheld ABX1 26 and the Legislature's constitutional authority to dissolve the RDAs.

ABX1 26 prohibited RDAs from engaging in new business, and established mechanisms and timelines for dissolution of the RDAs. It created the successor agencies and oversight boards to expeditiously wind down the affairs of the RDAs, redistribute RDA assets, and continue making payments due for enforceable obligations.

H&S Code section 34177.3(c) gave the Controller authority to review the successor agencies, stating in part, "Successor agencies shall lack the authority to, and shall not, transfer any powers or revenues of the successor agency to any other party, public or private, except pursuant to an enforceable obligation on a Recognized Obligation Payment Schedule approved by the department... The Controller may audit any transfer of authority or revenues prohibited by this section and may order the prompt return of any money or other things of value from the receiving party."

Furthermore, H&S Code section 34167.5 required the Controller to review the RDAs during the dissolution period, stating in part, “. . . the Controller shall review the activities of redevelopment agencies in the state to determine whether an asset transfer has occurred after January 1, 2011, between the city or county, or city and county that created a redevelopment agency or any other public agency, and the redevelopment agency.” In addition, the SCO may file a legal action to ensure compliance with this order.

## **Objectives, Scope, and Methodology**

Our review objectives were to determine whether payments, expenditures, transfers of revenues, and other assets of the Successor Agency beginning February 1, 2012, through December 31, 2014, between the Successor Agency and any other party, public or private, were pursuant to an enforceable obligation on a ROPS approved by the DOF.

Additionally, we determined whether the Orders of the Controller in the SCO’s RDA Asset Transfer Review Report issued on March 6, 2013, were successfully executed.

To meet our objectives, we performed the following procedures:

- Interviewed key personnel and documented the processes in which the Successor Agency completes its ROPS
- Reviewed meeting minutes, resolutions, and ordinances of the City, the former RDA, the Successor Agency, the Oversight Board, as well as any DOF letters
- Reconciled Successor Agency records to audited financial statements
- Reviewed the accounting records related to the recording of revenues, expenditures, and other transfers of assets from the Successor Agency
- Evaluated the accuracy of the ROPS using the applicable H&S Codes pertaining to the dissolution of RDAs and designation of Successor Agencies
- Reviewed the RDA Asset Transfer Review Report, determined if there were any outstanding findings, and noted any corrective actions.

## **Conclusion**

Our review of the Successor Agency’s records did not identify any unallowable transfers during the review period. Furthermore, our follow-up review of the City and the Montclair Housing Corporation’s compliance with the Orders of the Controller found that the City and the Montclair Housing Corporation complied with the order.

**Views of  
Responsible  
Officials**

At an exit conference on July 29, 2015, we discussed the review results with Donald Parker, CPA, Finance Director. In a telephone conversation on May 26, 2016, Mr. Parker agreed that a draft review report was not necessary and that the report could be issued as final.

**Restricted Use**

This report is solely for the information and use of the City of Montclair, the Montclair Housing Corporation, the Successor Agency, the Oversight Board, and the SCO. It is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record when issued final.



JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

May 31, 2016

**State Controller's Office  
Division of Audits  
Post Office Box 942850  
Sacramento, CA 94250-5874**

**<http://www.sco.ca.gov>**

S15-SAR-9004