

AGREEMENT NO. 12-49

AGREEMENT FOR REIMBURSEMENT OF COSTS AND CITY/SUCCESSOR AGENCY OPERATIONS LOAN

This **AGREEMENT FOR REIMBURSEMENT OF COSTS AND CITY/SUCCESSOR AGENCY OPERATIONS LOAN** ("Agreement") is made and entered into as of February 1 2012 by and between the **CITY OF MONTCLAIR**, a California municipal corporation ("City"), and the **CITY OF MONTCLAIR ACTING AS SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY OF MONTCLAIR** pursuant to Parts 1.8 and 1.85 of Division 24 of the California Health and Safety Code ("Successor Agency").

RECITALS

A. The City of Montclair Redevelopment Agency ("Agency") was established as a community redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Sections 33000, *et seq.* ("CRL"), and previously authorized to transact business and exercise the powers of a redevelopment agency pursuant to action of the City Council ("City Council") of the City.

B. Assembly Bill X1 26 added Parts 1.8 and 1.85 to Division 24 of the California Health & Safety Code, which laws cause the dissolution and wind down of all redevelopment agencies ("Dissolution Act").

C. On December 29, 2011, *California Redevelopment Association v. Matosantos*, Case No. S194861, the California Supreme Court upheld the Dissolution Act and thereby all redevelopment agencies in California are subject to the Dissolution Act and were dissolved effective February 1, 2012.

D. The Agency is now a dissolved community redevelopment agency pursuant to the Dissolution Act.

E. By a Resolution considered and approved by the City Council at an open public meeting the City chose to become and serve as the "Successor Agency" to the dissolved Agency under the Dissolution Act.

F. As of and on and after February 1, 2012, the City serves as the "Successor Agency" and is performing its functions as the successor agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to the review and approval by a seven-member Oversight Board formed thereunder.

G. By a Resolution considered and approved by the City Council at an open public meeting on January 12, 2012, pursuant to California Health and Safety Code Section 34176 of the Dissolution Act, the City declined to assume the housing assets and functions of the Agency and selected the Montclair Housing Authority to

so assume such housing assets and functions, and on such date also pursuant to Section 34176 the Authority accepted and assumed the housing assets and functions of the Agency and as of February 1, 2012, became and serves as the "Successor Housing Agency" of the former Agency pursuant to the Dissolution Act. At this time, any assets assigned and transferred by operation of law and to be assigned and transferred by authorization of and direction from the Oversight Board when formed and operating pursuant to the Dissolution Act to the Successor Housing Agency are not adequate to fund administrative support costs and expenses unless any future Low and Moderate Income Housing fund balances are authorized to be transferred under State Law to the Successor Housing Agency. If this occurs, a future modification to this Agreement may be necessary.

H. City, as Successor Agency, is engaged in activities necessary and appropriate to winding down the activities of the former Agency's Redevelopment Project Areas Nos. I, III, IV, V, and the Mission Boulevard Joint Redevelopment Project Area ("Project Areas") that were originally adopted and amended by Ordinances of the City Council.

I. Employees of the City will perform day-to-day administration and operation of the Successor Agency's duties and functions. Since the City of Montclair Redevelopment Agency was originally formed and upon the Successor Agency's effectiveness as of February 1, 2012, the City has provided and shall continue to provide services to the Successor Agency including, but not limited to, providing administrative, accounting, auditing, planning, engineering, legal, risk management, financial, clerical, recordkeeping, and other services necessary for the Successor Agency to carry out its responsibilities.

J. City and Successor Agency desire to affirm and document an ongoing cooperative arrangement regarding administrative and operational services and payment for services by entering into this contract whereby City agrees to provide administrative and operational services and Successor Agency agrees to pay City for the cost of all such services to be provided by City for Successor Agency in amount equal to the Successor Agency Administrative Budget prepared pursuant to California Health and Safety Code Section 34177(j) and approved by the Oversight Board for each six-month period and fiscal year under the term of this Agreement.

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

1. **Reimbursement of Administrative Expenses**. The Successor Agency shall be liable to the City for the payment of its Administrative Expenses as set forth in this Agreement and as adopted as part of an Administrative Budget by the Successor Agency, as approved by the Oversight Board, as such annual Administrative Budget may be amended, revised or reconciled from time to time. These Administrative Expenses shall be Enforceable Obligations and are in addition to any direct program or project expenses ("Program Expenses") incurred and noted on the Enforceable Obligations Payment Schedule ("EOPS") and in the Recognized Obligation Payment Schedule ("ROPS"), including salary and benefits of employees funded by the Successor Agency for Program Expenses. The Successor Agency

shall also be liable to the City for payment of these Program Expenses where they are adopted as part of the EOPS or ROPS.

2. Cost of Administrative Expenses and Administrative Cost Allowance.

2.1 Successor Agency and City estimate that the cost of administrative and operational services to be provided by City to the Successor Agency for the period of February 1, 2012, through June 30, 2012, is \$467,297.83 which is itemized in the Successor Agency's Administrative Budget approved by action of the Oversight Board. Pursuant to the provisions herein, Successor Agency agrees to pay to the City the estimated administrative expenses of the Successor Agency for the period February 1, 2012, through June 30, 2012, and for subsequent fiscal years, subject to Oversight Board approval and Successor Agency preparation and approval of an Administrative Budget estimate for such services and costs pursuant to the Dissolution Act. The Successor Agency shall also be liable to the City for payment of any Program Expenses incurred by City where they are adopted as part of the EOPS or ROPS.

2.2. Information and supporting data regarding the staffing and allocation of costs for have been prepared by Successor Agency and City staff and are made a part hereof by this reference. Within thirty (30) days of the expiration of the 2011-2012 fiscal year and each year thereafter during the term of this Agreement, the parties shall determine the actual costs incurred by Successor Agency for services provided to the City. If the actual amount incurred by Successor Agency is less than the estimated amount, City shall reimburse Successor Agency in the amount overpaid within 30 days of such notice, and if the actual amount incurred by Successor Agency is greater than the estimated amount, any additional amount above the estimated amount shall be due and payable by Successor Agency from the Redevelopment Obligation Retirement Fund and the additional amount shall be advanced to Successor Agency by City.

3. Services to be Provided. City agrees to continue to aid and cooperate and shall aid and cooperate in the planning, undertaking, construction and operation of remaining enforceable obligations of the Successor Agency previously incurred by the former Agency as it relates to enforceable obligations of the former Agency within the City provided the cost of such services are paid by Successor Agency. At the request of Successor Agency through the Finance Director and duly authorized designees, City and its officers and employees shall perform services for Successor Agency in carrying out its work related to meeting the former Agency's enforceable obligations and for winding down the activities of the former Agency and shall have access to any and all personnel and the facilities of the departments and offices of the City. Those City officers and employees who are also appointed to positions or offices with or related to the Successor Agency shall perform services for the each agency in a dual capacity. The City Manager and duly authorized designees, and other appropriate City officials on behalf of the City and the Successor Agency, and duly authorized designees, shall determine and establish the procedures to be followed in requesting and rendering such services. The costs of administrative services shall be considered Administrative Expenses in the Annual

Administrative Budget. The costs of other Successor Agency Program Expenses where supported by City services are identified as specific line items on the EOPS or ROPS and not part of the estimated Administrative Expenses identified in Section 1. It is anticipated that initially the cost of providing services to the Successor Agency will exceed the administrative allowance provided by the Dissolution Bill (AB X1 26) and the difference will be made up from available resources present in the Successor Agency. In the future, if additional available resources are not present and the administrative allowance is insufficient to provide for the level of services needed, that City shall be under no obligation to continue to provide uncompensated services at previous levels.

4. **Meeting Facilities.** City agrees to make available to Successor Agency such office space and meeting space as is necessary for conducting meetings and the business of such agency, including use of the City Council Chambers and appropriate conference room(s) for open public meetings, closed session meetings, and study session meetings of the Successor Agency and Oversight Board, and meetings of Successor Agency staff, counsel, consultants, and other representatives. Each agency shall use such space in accordance with the rules and regulations of the City as applicable to other buildings and offices of the City.

5. **Succeeding Years during Term of Agreement.** The procedure set forth above in Sections 2, 3 and 4 shall be undertaken by Successor Agency, the Oversight Board, and City for each successive six-month period and for each fiscal year during the term of this Agreement based on each approved Administrative Budget and ROPS prepared pursuant to the Dissolution Act.

6. **City Cost Allocation Plan; Estimated Cost of Administrative Services and Facilities.** Expenses shall be calculated in the manner set forth in City's cost allocation plan, or other applicable reasonable cost allocation and accounting plan approved by the parties that conforms with generally accepted accounting principles and that is generally applicable to all users of services and facilities of the City. The specific costs to be allocated herein shall be based upon the cost of the following categories of services:

6.1 **Wages and Benefits Successor Agency.** Wage and benefit expenses incurred in connection with City employees described to perform administrative services work for the Successor Agency (as opposed to direct program or project work as identified as "Program Expenses" related to enforceable obligations), including salaries, wages, and fringe benefits. The costs attributable to employees who devote less than 100 percent of their time to the Successor Agency shall be allocated in accordance with the City's cost allocation plan.

6.2 **General Overhead.** A general indirect administrative operating expenses and overhead support charge which shall be determined in accordance with the City's cost allocation plan and Successor Agency Annual Administrative Budget.

6.3 Specific Services. All expenses that City may actually incur in providing specific administrative services on behalf of Successor Agency including, but not limited to, audit services, lease of space to accommodate Successor Agency's activities, City finance, auditor and accounting services, property insurance for Successor Agency's assets and properties, contracts for real estate data and information, department supplies, mail and postage services, equipment maintenance, and IT support. Operational services that relate directly and specifically to certain programs, contracts, and/or projects such as engineering design, planning, contract costs, contract administration, inspection, surveys shall not be considered administrative services but direct specific program and project expenditures ("Program Expenses") and shall be so listed and included as direct costs in each Administrative Budget subject to the Dissolution Act and other applicable laws.

7. Annual Expenses Deemed City Advance. For each year in which Successor Agency does not have adequate funds to pay and reimburse for Administrative Expenses as shown in the adopted Administrative Budget each such amount may be deemed an advance by City to Successor Agency, at the discretion of the City, and such amount may be deemed to have been loaned by City to Successor Agency ("City/Successor Agency Operations Loan") subject to applicable laws. If such an obligation is created it is done so with the expressed intent that it be an enforceable obligation under the law and not to be deemed to be a debt between the former agency and its community which could be terminated. Any such loan unpaid by the Successor Agency shall bear interest at a rate approved by the Oversight Board and the City.

8. Repayment of Operations Loan. Successor Agency agrees to repay the City/Successor Agency Operations Loan (and all future advances thereto) from (former) tax increment funds allocated to Successor Agency that are to be paid from property tax revenues deposited in the Redevelopment Property Tax Trust Fund pursuant to California Health and Safety Code Section 34177(k) and other applicable laws. Successor Agency shall repay to City the principal amount of the City/Successor Agency Operations Loan on or before the last date that Successor Agency may receive tax increment funds pursuant to the time and financial limitations required to meet all enforceable obligations of the Successor Agency and subject to the Dissolution Act and other applicable laws.

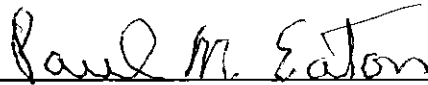
9. Provisions Severable. If any provision of this Agreement or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable. The City Council and Successor Agency each hereby declares that it would have approved this Agreement irrespective of the invalidity of any particular portion hereof.

10. Effective Date of Agreement. This Agreement shall become effective as of the date in the first paragraph hereof and shall continue thereafter until modified or terminated by the parties hereto.

11. **Subordination Indebtedness.** The indebtedness of the City/Successor Agency Operations Loan under this Agreement shall be junior and subordinate to other allocated moneys made from the Redevelopment Property Tax Trust Fund including those pursuant to California Health and Safety Code Section 34183(a)(1) and (2).

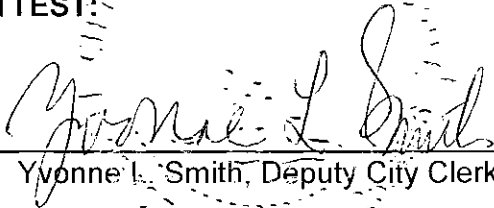
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their officers thereunto duly authorized on the date first above written.

CITY OF MONTCLAIR, a California
municipal corporation



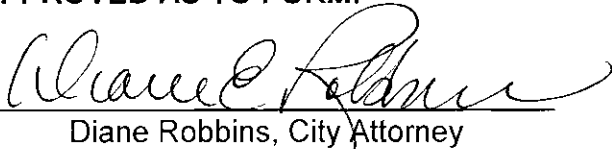
Paul M. Eaton, Mayor

ATTEST:



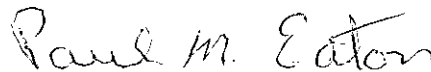
Yvonne L. Smith, Deputy City Clerk

APPROVED AS TO FORM:



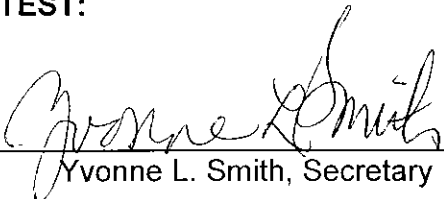
Diane Robbins, City Attorney

CITY OF MONTCLAIR ACTING AND SERVING
AS THE SUCCESSOR AGENCY TO THE CITY
OF MONTCLAIR REDEVELOPMENT AGENCY



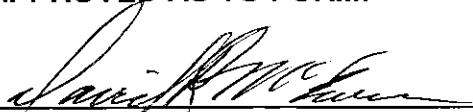
Paul M. Eaton, Chairman
Successor Agency

ATTEST:



Yvonne L. Smith, Secretary

APPROVED AS TO FORM:

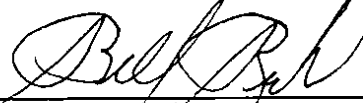


David McEwen, Special Counsel to City as Successor Agency

[Signatures continued from previous page]

On June 13, 2012, the Successor Agency Oversight Board reviewed and approved the proposed Agreement between the City of Montclair and the City of Montclair, acting and serving as the Successor Agency to the City of Montclair Redevelopment Agency

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

A handwritten signature in cursive script, appearing to read "Bill Ruh", written over a horizontal line.

Bill Ruh, Chairman
Oversight Board