

EXHIBIT 5-A

COMPENSATION AGREEMENT
(Pacific Hotel)

This Agreement, dated for reference purposes as of _____, 20__ is entered into by and among the Monterey Successor Agency (the "Successor Agency"), successor in interest to the dissolved Redevelopment Agency of the City of Monterey (the "Former Agency"), the City of Monterey, the Monterey County, the Monterey County Water Resources Agency (MCWRA Zone 11), the Monterey Peninsula Water District, the Monterey Regional Park District, the Monterey County Office of Education, the Monterey Peninsula Unified School District, and Monterey Peninsula College, on the basis of the following facts, understandings, and intentions of the Parties:

RECITALS

- A. These Recitals refer to and utilize certain capitalized terms which are defined in Section 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use thereof in this Agreement.
- B. Pursuant to the Redevelopment Dissolution Statutes, the Former Agency was dissolved as of February 1, 2012, and the Successor Agency became responsible for paying the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Former Agency.
- C. Accordingly, ownership of the Former Agency's properties that had been acquired to implement the Redevelopment Plan transferred to the Successor Agency for disposition in accordance with the Redevelopment Dissolution Statutes.
- D. The City of Monterey received an Urban Renewal Grant, from the United States Department of Housing and Urban Development ("HUD"), under Loan and Grant Contract No. Calif. R-34 (LG), which the City used the HUD grant funds to acquire property commonly referred to as the Hotel Pacific Property located at 300 Pacific Street, City of Monterey, County of Monterey, California, as further described in the attached Exhibit A, incorporated herein by this reference (the "Property").
- E. The Property was acquired in the name of the "Urban Renewal Agency of the City of Monterey" which was later renamed "Redevelopment Agency of the City of Monterey." Though title to the Property remained in the name of the Urban Renewal Agency, the Former Agency owned the Property until it was dissolved pursuant to the California Dissolution Statutes.
- F. The Property is subject to a long-term lease which facilitated the construction of a hotel on the Property (the "Lease"), a copy of the Lease is attached hereto as Exhibit B and incorporated herein by this reference.
- G. Paragraph 1.C of the Lease provides, that the Former Agency "may assign all right, title and interest in this lease to the CITY OF MONTEREY. In said event, or in the event the [Former] Agency is terminated by action of law, the City shall automatically succeed to all

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right, title and obligation under the lease, and this lease shall be deemed amended by substituting the word "City" wherever the word Agency appears. [emphasis added]"

H. Upon completion of the project, HUD approved that certain project, Urban Renewal Agency-City of Monterey Closeout Agreement (the "Closeout Agreement"), by and between HUD, the Urban Renewal Agency and the City which specifically requires that all lease revenues generated at the Property and all proceeds from the disposition of the Property be used by the City as program income under 24 C.F.R. §570.801, and used solely to further the CDBG national objectives under the provisions of 24 C.F.R. §570.506. The Closeout Agreement is a valid and binding obligation that continues to restrict the use of revenues and property disposition proceeds generated at the Property.

I. The Successor Agency received a "Finding of Completion" from the DOF on September 10, 2013, confirming that the Successor Agency had made specified required payments under the Redevelopment Dissolution Statutes, and entitling the Successor Agency to prepare and submit a Long-Range Property Management Plan (the "LRPMP", as further defined in Section 1) to the Oversight Board and the DOF for approval.

J. The Successor Agency initially prepared and obtained Oversight Board approval of its LRPMP on February 26, 2014, calling for the Former Agency's Property to be transferred by the Successor Agency to the City for governmental use and to fulfill an enforceable obligation. Under the initial LRPMP, the Successor Agency proposed to transfer the Property to the City for public use and to fulfill the terms of the Lease, an enforceable obligation as defined in Health and Safety Code 34171(d). The intent being that the City would continue to own the Property and continue to use the lease revenue to further the national objectives consistent with the CDBG regulations.

K. The DOF directed that, in order to obtain DOF approval, the initial LRPMP needed to be amended to provide for: (1) an assignment of the Former Agency's interest in the Lease to the City; and (2) transfer of the fee title to the Property to the City subject to the preparation and execution of a compensation agreement among the City and the Taxing Entities pursuant to Health and Safety Code Section 34180(f).

L. To comply with this DOF directive, the Successor Agency revised the LRPMP through an amendment approved by the Oversight Board and submitted to the DOF on October 28, 2015. The DOF approved the Revised LRPMP by determination letter issued on December 22, 2015. Under the revised LRPMP, transfer of the Property to the City is intended to allow the City to fulfill the duties and obligations of the Former Agency under the Lease and the Closeout Agreement.

M. In fulfillment of the Paragraph 1.C of the Lease and the LRPMP, the Successor Agency and the City executed that certain Assignment and Assumption of Ground Lease Agreement, dated as of February __, 2016, under which the Successor Agency assigned on behalf of itself and the Former Agency, all of the Former Agency's right, title, and interest in and obligations under the Lease to the City.

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N. As designated in the LRPMP, the Successor Agency now desires to transfer the fee interest in the Property to the City for retention by the City for future development for a project in approved redevelopment plan as allowed under Health and Safety Code Section 34191.5(c)(2).

O. The Parties desire to enter into this Agreement to comply with the DOF directives and the terms of the Revised LRPMP. The Parties acknowledge that the restrictions of the Closeout Agreement and the Lease, result in none of the lease revenue funds or the property disposition funds being distributed to any other entity or used for anything other than as program income of the City under the provisions of 24 CFR 570.506.

NOW, THEREFORE, the Parties agree as follows:

Section 1. Definitions. The following definitions shall apply in this Agreement:

- (a) "Agreement" means this Compensation Agreement, as this Agreement may be amended from time to time.
- (b) "Applicable Shares" has the meaning given in Section 6(a).
- (c) "Auditor-Controller" means the Monterey County Auditor-Controller.
- (d) "City" means the City of Monterey, a California charter city.
- (e) "County" means the County of Monterey, a political subdivision of the State of California.
- (f) "Restricted Proceeds" means, with respect to the Property, any and all of the lease and other revenue funds or the property disposition funds generated at the Property, all of which are deemed to be restricted as program income under 24 CFR 570.801 for use by the City to meet the CDBG national objectives under 24 CFR 570.506.
- (g) "DOF" means the California Department of Finance.
- (h) "Effective Date" has the meaning given in Section 2.
- (i) "ERAF" means the Educational Revenue Augmentation Fund maintained by the Auditor-Controller.
- (j) "Former Agency" means the dissolved Redevelopment Agency of the City of Monterey.
- (k) "LRPMP" means the Revised Long-Range Property Management Plan of the Successor Agency as it exists from time to time. As of the date of this Agreement, the LRPMP consists of the revised Long-Range Property Management Plan dated December 7, 2015, as approved by the Oversight Board on December 7, 2015. The DOF approved the LRPMP in the determination letter dated December 22, 2015.

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(l) "Oversight Board" means the Successor Agency's oversight board established and acting in accordance with the Redevelopment Dissolution Statutes.

(m) "Parties" means all of the parties to this Agreement as set forth in the opening paragraph of this Agreement. "Party" means one of the Parties individually.

(n) "Property" has the meaning set forth in Recital D.

(o) "Redevelopment Dissolution Statutes" means collectively ABx1 26 enacted in June 2011, AB 1484 enacted in June 2012, and SB 107, enacted September 2015, and any future amendments that may apply.

(p) "Redevelopment Plan" means the Redevelopment Plan for the Custom House Redevelopment Project Area, adopted by Ordinance No. 1255 C.S. on July 5, 1061 and amended by the following ordinances:

Ordinance No. 1449 C.S. on July 6, 1065

Ordinance No. 1571 C.S. on July 5, 1967

Ordinance No. 1737 C.S. on July 7, 1970

Ordinance No. 1867 C.S. on November 21, 1972

(q) "Successor Agency" means the Successor Agency of the dissolved Redevelopment Agency of the City of Monterey.

(r) "Taxing Entities" means, collectively, the following entities that comprise affected taxing entities for purposes of the Redevelopment Dissolution Statutes: the City of Monterey, the Monterey County, the Monterey County Water Resources Agency (MCWRA Zone 11), the Monterey Peninsula Water District, the Monterey Regional Park District, the Monterey County Office of Education, the Monterey Peninsula Unified School District, and Monterey Peninsula College. "Taxing Entities" shall also mean and include ERAF if and to the extent the Auditor-Controller determines that ERAF is entitled to a distribution of compensation pursuant to Section 6 and the provisions of Health and Safety Code Section 34188. Notwithstanding anything to the contrary herein, ERAF is only considered a Taxing Entity for purposes of distributing funds and for no other purpose, and no additional approval or signature will be required on behalf of ERAF.

Section 2. Effectiveness of Agreement.

(a) This Agreement shall become effective only upon satisfaction of the following conditions:

(1) Approval of this Agreement by the Taxing Entities' governing boards and direction for the Taxing Entities to execute this Agreement; and

(2) Approval of this Agreement by the Successor Agency's governing board and direction for the Successor Agency to execute and implement this Agreement pursuant to Health and Safety Code Section 34180(f)

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(b) Promptly following the effectiveness of this Agreement, the City and the Successor Agency shall transmit notice to all the other Parties that the Agreement is effective and specifying the date the Agreement became effective (the "Effective Date").

Section 3. Signatories With Respect To Certain Funds.

(a) Flood Control District Funds. The Monterey County Water Resources Agency (the "Water Resource Agency") administers the following special funds, and, in addition to entering into this Agreement for the Water Resource Agency itself, is authorized to, and has entered into and executed this Agreement on behalf of the following:

- (1) Monterey County Water Resource Agency; and
- (2) Monterey County Water Resource Agency Zone 11.

(b) Office of Education Funds. The Monterey County Office of Education (the "County Office of Education") administers funds for the following special funds, and, in addition to entering into this Agreement for the County Office of Education itself, is authorized to, and has entered into this Agreement on behalf of the following:

- (1) County Office of Education Instruction Pupils Fund;
- (2) Juvenile Hall Education Fund;
- (3) Services Fund;
- (4) Capital Fund;
- (5) Development Center Fund; and
- (6) Audio Visual Capacity Fund. [Note: There is a need to confirm separate funds.]

(c) ERAF. ERAF may be entitled to a distribution pursuant to Section 6 of a portion of the Applicable Share. Pursuant to instruction and direction from the DOF and the Auditor-Controller, there is no need for a separate signatory to execute this Agreement on behalf of ERAF because the ultimate beneficiaries of any distribution of Applicable Shares to ERAF are themselves Taxing Entities that are signatories to this Agreement.

Section 4. Conveyance of Property to City. Promptly following the execution of this Agreement, the Successor Agency shall convey, and the City shall accept, all of the Former Agency's fee interest in and to the Property. The Successor Agency shall convey the Property by quitclaim deed in form reasonably acceptable to the Successor Agency and the City. In accordance with Health and Safety Code Sections 34179(h)(1)(D) and (E), and Section 34191.5(f), no further approval of the Oversight Board or the DOF will be necessary to effectuate the transfers contemplated herein.

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Section 5. Retention of Property by City.

(a) Upon the transfer of the Property to the City, pursuant to Section 4 above, the City shall retain the Property to fulfill the terms of the Lease and the Closeout Agreement.

(b) Notwithstanding anything to the contrary, as designated in the LRPMP, the City shall also retain the Property for future development for a project in approved redevelopment plan as allowed under Health and Safety Code Section 34191.5(c)(2).

Section 6. Compensation To Taxing Entities Related To Property Transfers.

(a) Distribution of Restricted Proceeds. The City shall retain any and all Restricted Proceeds generated by the Property, for use by the City as program income under the provisions of 24 C.F.R. §570.801 to further the CDBG national objectives 24 C.F.R. §570.506. Because all funds generated at the Property are deemed Restricted Proceeds, the City will not be required to distribute any funds to the Auditor-Controller for future distribution among the Taxing Entities in proportion to their shares of the base property tax (the "Applicable Shares"), as determined by the Auditor-Controller pursuant to Health and Safety Code Section 34188. The attached Exhibit B shows the distribution of Restricted Proceeds and Applicable Shares of the Taxing Entities that would have applied to a distribution under this Section 6 had the distribution been made on January 1, 2016, as provided by the Auditor-Controller.

Section 7. Term of Agreement; Early Termination.

(a) Term. The term of this Agreement shall commence on the Effective Date and terminate upon the transfer of the Property to the City pursuant to Section 4, above ("Termination"). Within five (5) business days of transfer of the Property from the Successor Agency to the City, the City shall send a notice of termination of this Agreement to all the Taxing Entities (the "Termination Notice").

(b) Termination. Upon Termination of this Agreement and transmittal of the Termination Notice, no Party shall have any further rights or obligations under this Agreement, and the City may continue to collect and retain the Restricted Proceeds from the Property, including any and all Restricted Proceeds that the City has not yet received as of the effective date of the Termination, the rights of the City to collect any and all Restricted Proceeds shall survive termination of this Agreement.

Section 8. Miscellaneous Provisions.

(a) Notices. All notices, statements, or other communications made pursuant to this Agreement to another Party or Parties shall be in writing, and shall be sufficiently given and served upon the Party if sent by: (1) United States certified mail, return receipt requested, postage prepaid; or (2) nationally recognized overnight courier, with charges prepaid or charged to sender's account, and addressed to the applicable Party in the manner specified in the attached Exhibit A. Any Party may change its address for notice purposes by written notice to the other Parties prepared and delivered in accordance with the provisions of this Section 9(a).

(b) No Third Party Beneficiaries. No person or entity other than the Parties and their permitted successors and assigns, shall have any right of action under this Agreement.

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(c) Litigation Regarding Agreement. In the event litigation is initiated attacking the validity of this Agreement, each Party shall in good faith defend and seek to uphold the Agreement; provided, however, that the costs of such litigation shall be borne solely by the City and/or the Successor Agency.

(d) State Law; Venue. This Agreement, and the rights and obligations of the Parties hereto, shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Monterey County, California or in the Federal District Court for the Northern District of California.

(e) Attorneys' Fees. In any action which a Party brings to enforce its rights hereunder, the unsuccessful Party or Parties shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees.

(f) Entire Agreement; Amendment. This Agreement constitutes the entire and integrated agreement of the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only in writing and only if signed by all of the Parties.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Parties. Any executed counterpart of this Agreement may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

(h) Non-Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(i) No Partnership. Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

(j) Ambiguities. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(k) Exhibits. The following exhibits are incorporated in this Agreement by reference:

Exhibit A: List of Addresses for Notice Purposes

Exhibit B: Illustrative Distribution of Restricted Proceeds and Applicable Shares

(l) Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

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(m) Action or Approval. Whenever action and/or approval by the City is required under this Agreement, the City Manager or the City Manager's designee may act on and/or approve such matter unless specifically provided otherwise, or unless the City Manager determines in the City Manager's discretion that such action or approval requires referral to the City Council for consideration. Whenever action and/or approval by the Successor Agency is required under this Agreement, the Successor Agency Executive Director or the Successor Agency Executive Director's designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Successor Agency Executive Director determines in the Successor Agency Executive Director's discretion that such action or approval requires referral to the Successor Agency Board for consideration.

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth in the opening paragraph of this Agreement.

MONTEREY SUCCESSOR AGENCY, a
separate legal entity pursuant to Health & Safety
Code §34173

By: _____
Clyde Roberson, Chair

Dated: _____

APPROVED AS TO FORM OF LEGALITY:

Dianne J. McLean, Esq.
Goldfarb & Lipman LLP
City Special Counsel

ATTEST:

City Clerk

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Whereas this Agreement has been entered into by the undersigned as of the date first written above.

CITY OF MONTEREY, a California charter city

By: _____
Clyde Roberson, Mayor

Dated: _____

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

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Whereas this Agreement has been entered into by the undersigned as of the date first written above.

COUNTY OF MONTEREY, a political subdivision
of the State of California

By: _____

Name: _____

Its: _____

Dated: _____

APPROVED AS TO FORM:

County Counsel

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Whereas this Agreement has been entered into by the undersigned as of the date first written above.

MONTEREY PENNINSULA WATER DISTRICT

By: _____

Name: _____

Its: _____

Dated: _____

APPROVED AS TO FORM:



David Laredo
General Counsel