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MICHAEL MCCARTHY

October 2, 2017

David Stoldt, General Manager  
Monterey Peninsula Water Management District (MPWMD)  
5 Harris Ct., Bldg G  
Monterey, CA 93940

Subject: Follow-up Request - Compensation Agreement Regarding Transfer of Former City of Monterey Redevelopment Agency Property at 300 Pacific Street, Monterey, California to the City of Monterey

Dear Mr. Stoldt:

**The City of Monterey requests your agency's final action by November 17, 2017.** This request marks one year from the original request.

This letter is a follow-up on the City of Monterey's November 18, 2016 request to have your agency review and approve a compensation agreement that is related to the transfer of property at 300 Pacific Street from the Successor Agency of the City of Monterey Redevelopment Agency (Successor Agency) to the City of Monterey (City). As explained in the November 18, 2016 letter, which is attached for reference, the compensation agreement acknowledges transfer of the property at no cost to the City. The transfer is consistent with the Successor Agency's Long Range Property Management Plan, and it will generate no proceeds. Consequently, there will be no distribution as property tax to local taxing entities.

Transfer of this property to the City of Monterey is the final disposition step and one of the last tasks of the Successor Agency. The Successor Agency's detailed analysis of the transfer confirms all proceeds generated from the 300 Pacific Street property are restricted for use under contracts and laws that pre-date the dissolution of redevelopment agencies in the State of California. These proceeds can only be used by the City for specific purposes, and cannot be distributed to other taxing entities. The property transfer to the City will ensure all proceeds from the property continue to fulfill the obligations of the City's former Redevelopment Agency to use the funds consistent with CDBG restrictions. Revenue generated through disposition of the property shall only be used by the City to fund CDBG eligible programs and activities.

The compensation agreement that is proposed by the Successor Agency constitutes the Successor Agency's good-faith efforts to transfer 300 Pacific Street to the City of Monterey in a manner that complies with the requirements of the Redevelopment Agency Disposition Act statutes, the Department of Finance and the Department of Housing and Urban Development. I am hopeful your agency will agree with the Successor Agency's determination to transfer 300

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Pacific Street to the City without compensation and support a recommendation to your Board of Directors to approve the attached compensation agreement as proposed. I am also asking for your agency's decision on the Compensation Agreement is provided to the Successor Agency no later than **November 17, 2017**.

Any questions or request for a meeting to discuss the compensation agreement may be directed to Elizabeth Caraker, City of Monterey Principal Planner at (831) 646-1739 or caraker@monterey.org

Sincerely,

  
for Michael McCarthy  
City Manager

Attachment: November 18, 2016 Compensation Agreement Request Letter

c: Mayor and City Council  
Oversight Board Chair and Members  
Successor Agency Long Range Property Management Plan File

**EXHIBIT 5-B**



November 18, 2016

Att: David Stoldt, General Manager  
Monterey Peninsula Water Management District (MPWMD)  
5 Harris Ct., Bldg G,  
Monterey, CA 93940

Subject: Compensation Agreement - Transfer of Former City of Monterey Redevelopment Agency Property at 300 Pacific Street, Monterey, California to the City of Monterey

Dear Mr. Stoldt,

This letter introduces a request that Monterey Peninsula Water Management District (MPWMD) review and approve a compensation agreement regarding the proposed transfer of property at 300 Pacific Street from the Successor Agency of the City of Monterey Redevelopment Agency (Successor Agency) to the City of Monterey (City). As contemplated in the long range property management plan approved by the Department of Finance the Successor Agency will transfer the property at no cost to the City for future development. The compensation agreement acknowledges the transfer will generate no proceeds and there will be no distribution as property tax to local taxing entities, because all proceeds generated from the property at 300 Pacific Street are restricted for use under contracts and laws that pre-date the dissolution of redevelopment agencies in the State of California, and can only be used by the City for specific purposes and cannot be distributed to other taxing entities.

Restrictions on proceeds generated from the property limit their use to activities that meet one of U.S. Department of Housing and Urban Development (HUD) national objectives, which require not less than 70 percent of the funds to be used for activities that benefit low- and moderate-income persons and are eligible Community Development Block Grant (CDBG) expenditures. Examples of activities that are supported by Hotel Pacific proceeds include: rental assistance to low-income households, development of low-income rental housing, counseling and street outreach to individuals experiencing homelessness, supplemental food assistance programs, legal services for seniors, motel vouchers for emergency shelter, and housing rehabilitation grants and loans to low-income homeowners who would otherwise be unable to maintain their homes in a safe manner.

I am reaching out to all affected taxing entities to introduce the Successor Agency's request for approval of the compensation agreement. This exercise to negotiate and gain Monterey Peninsula Water Management District's (MPWMD) approval of the compensation agreement is being conducted solely to fulfill the requirements of the State of California Department of

## EXHIBIT 5-B

Finance (Department of Finance) which conditioned the transfer of 300 Pacific Street upon execution of a compensation agreement between the Successor Agency and all of the affected taxing entities. City staff is ready and willing to meet with appropriate agency staff to answer questions and provide whatever additional details are needed for a full understanding of this property transfer and of the terms of the compensation agreement.

### Background

The Redevelopment Dissolution Act (AB 1x 26 and AB 1484) and ensuing court actions, eliminated all redevelopment agencies in the state on January 31, 2012 and established procedures for disposing agency assets. Disposition of redevelopment agency real property is one of the requirements. In many cases the Successor Agency is required to distribute resultant proceeds from the disposition of property as property tax to local taxing entities. In cases where the Successor Agency proposes to transfer property to the city that created the redevelopment agency to further redevelopment that is consistent with the city's redevelopment plan the successor agency is required to negotiate and obtain a compensation agreement with all of the affected taxing entities.

The Successor Agency's approved long range property management plan authorizes the transfer of 300 Pacific Street to the City for the purpose of further redevelopment consistent with the City's Custom House Redevelopment Plan. The Department of Finance approved transfer of the property on December 22, 2015 subject to execution of a compensation agreement.

### Property Summary

The property at 300 Pacific Street was assembled by the City of Monterey Urban Renewal Agency using U.S. Department of Housing and Urban Development (HUD) Urban Renewal Funds and developed pursuant to a ground lease as a hotel. The lease terminates December 31, 2058. The hotel is the Hotel Pacific. It was completed in 1986. In accordance with HUD requirements all current and future proceeds generated from the property shall be treated as Community Development Block Grant (CDBG) program income and solely used to support CDBG eligible activities. Consistent with this requirement all rent revenue earned under the lease is applied to the City's CDBG programs. In Fiscal Year 2015-2016 the Hotel Pacific lease generated over \$300,000 in ground rent.

The December 22, 2015 Department of Finance approval of the Successor Agency's property disposition plan for 300 Pacific Street authorizes assignment of the ground lease and transfer of the property to the City. The disposition plan allows the City to use the funds according to the restrictions and continue to fulfill the contractual obligations of the City's former Redevelopment Agency related to the property. This transfer also conforms to Redevelopment Agency Dissolution Act statutes, ABx1 26 and AB 1484, as a transfer of property to be retained for future development.

Under the approved long range property management plan, the assignment of the ground lease does not require execution of the compensation agreement. The assignment is authorized pursuant to Ground Lease Condition 1.C and it is already in process. Ground Lease Condition 1.C states:

"Succession by City of Monterey. The Agency may assign all right, title and interest in this lease to the City of Monterey. In said event, or in the event the Agency is terminated by Action of law, the City shall automatically succeed to all right, title and obligation under this lease, and this lease shall be deemed amended by substituting the word

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"City" wherever the word "Agency" appears."

Transferring the fee title to the property to the City is the final disposition step and one of the last tasks of the Successor Agency.

### Compensation Agreement

It is the Successor Agency's intent to transfer the fee title to the property to the City to ensure all proceeds from the property continue to be used to fulfill the obligations of the City's former Redevelopment Agency to use the funds consistent with CDBG restrictions. Consequently, any and all revenue generated from lease or proceeds generated through disposition of the property are only to be distributed the City to fund CDBG eligible programs and activities. There is no authority to distribute any proceeds from the transfer of the lease and property to local taxing entities.

The determination that this transfer should take place without compensation is based on the following findings:

1. The property is subject to a Lease and assignment of the Lease to the City is an enforceable obligation. The Lease is dated October 29, 1984, as amended several times, with the last amendment dated January 1, 2004, The Lease terminates December 31, 2058. Paragraph I.C. of the Lease states, "...or in the event the Agency is terminated by action of law, the City shall automatically succeed to all right, title and obligation under the lease...".
2. Pursuant to Lease Paragraph I.C upon termination of the Redevelopment Agency the City shall automatically succeed to all right, title and obligation under the Lease. This transfer is an enforceable obligation specified in the lease.
3. The property was acquired by Urban Renewal Agency through use of Federal HUD loan and grant, (Loan and Grant Contract No. Calif. R-34 for Urban Renewal Project). There is no documentation to suggest that tax increment funding was used to assist in the assembly of the property that has been developed into the Hotel Pacific. Resolution No. 12,858 indicates that prior to completing the Urban Renewal Project "The Council authorizes the use of local fund, including CDBG funds to construct the public improvements required by the Plan which have not commenced at the time of settlement."
4. Property grant deeds are in the name of the to Urban Renewal Agency; not to the City of Monterey Redevelopment Agency.
5. The HUD Agreement states: "The proceeds from the disposition of any property listed above (note Custom House Redevelopment Plan Parcels H-2, H-4 and I-1 are listed) after the financial settlement shall be treated as program income of the City under provisions of 24 CFR 570.206."\* These are CDBG eligible activities and all current rental proceeds earned under the lease are applied to the City of Monterey CDBG programs. Upon completion of the transfer the City of Monterey is required to continue to treat all proceeds generated from the property as CDBG program income as required under the HUD Agreement.
6. Directing continued use of the property as a hotel use and continued use of ground lease rental proceeds as program income is consistent with requirements in the

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Redevelopment Plan and HUD Agreement. Transfer to the City of Monterey to retain for these purposes is consistent with HSC Sections 34191.5(c)(2) as property used to fulfill an enforceable obligation and, as required by the DOF under HSC Section 34191.5(c)(2)(A) as property retained for future development.

7. Pursuant to the HUD Agreement proceeds from the disposition of the 300 Pacific Street property must be treated as program income of the City under provisions of 24 CFR 570.206<sup>1</sup>. Program income is required to be used for activities that meet one of the CDBG national objectives, which require not less than 70 percent of the aggregate amount of CDBG funds to be used for activities that benefit low and moderate income persons. HUD has indicated that any sale proceeds generated from the sale of the property must be used in accordance with all CDBG requirements and never loses its CDBG affiliation.
8. The City of Monterey currently administers a robust CDBG program providing services and projects to benefit low and moderate income persons. Because of this existing program the City of Monterey is the appropriate public jurisdiction to receive the property transfer. The City of Monterey is required as the unit of the general local government to use the disposition proceeds in a manner that is compliant with the HUD Agreement. The HUD Agreement and the CDBG regulations prohibit transferring the proceeds generated from the property to the taxing entities for any disbursement provided in the Redevelopment Dissolution Statutes, ABx1 26, as amended by AB 1484.
9. Transfer to the City of Monterey to fulfill an enforceable obligation under the Ground Lease and to retain for future development is consistent with HSC Section 34191.5(c)(2)(A) because the City is also the appropriate public jurisdiction pursuant to the existing lease agreement, HUD Agreement, the Housing Act of 1949, as amended and CDBG regulations.
10. Transfer to the City of Monterey without compensation is warranted because the Lease states, "...or in the event the Agency is terminated by action of law, the City shall automatically succeed to all right, title and obligation under the lease..."; and the HUD Agreement states: "The proceeds from the disposition of any property ...after the financial settlement shall be treated as program income of the City under provisions of 24 CFR 570.206." These agreements, together with the applicable federal statutes and regulations require that all program income be used to fund CDBG eligible programs conforming to 24 CFR 570.504 and supports the Successor Agency's intent to execute compensation agreements with local taxing entities that will expressly: (a) restrict the distribution and use of program income generated under the Lease or from the sale or disposition of the property and any subsequent transfer; and (b) state that such revenues will not be available for distribution to the local taxing entities.
11. The Urban Renewal Program was a federal program authorized by HUD to provide economic development to local government. It was a government program, federal funded with covenants that restricted any future uses contrary to the purpose of the program. The property and Lease for the hotel project serves a national objective of the CDBG program conforming to 24 CFR 570.504 as required by HUD under the Housing Act of 1949, as amended.

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<sup>1</sup> 24 CFR 570.504 is the correct citation

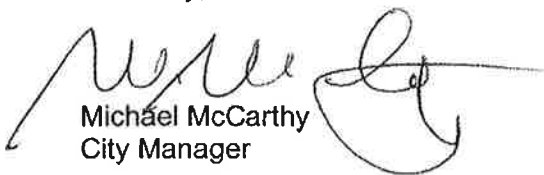
**EXHIBIT 5-B**

Conclusion

The compensation agreement that is proposed by the Successor Agency constitutes the Successor Agency's good-faith efforts to transfer 300 Pacific Street to the City of Monterey in a manner that complies with the requirements of the Redevelopment Agency Dissolution Act statues, the Department of Finance and the HUD. I am hopeful your agency will support a recommendation to your Board of Directors to approve the attached compensation agreement as proposed and return an executed copy of the compensation agreement no later than February 29, 2017.

Any questions or request for a meeting to discuss the compensation agreement may be directed to Richard S. Marvin, City of Monterey Housing and Property Manager at (831) 646-3995 or marvin@monterey.org

Sincerely,

  
Michael McCarthy  
City Manager

Attachment: Compensation Agreement

c: Mayor and City Council  
Oversight Board Chair and Members  
Successor Agency Long Range Property Management Plan File