



MEET AND CONFER REQUEST FORM

Instructions: Please fill out this form in its entirety to initiate a Meet and Confer session. Additional supporting documents may be included with the submittal of this form—as justification for the disputed item(s). Upon completion, email a PDF version of this document (including any attachments) to:

Redevelopment_Administration@dof.ca.gov

The subject line should state “[Agency Name] Request to Meet and Confer”. Upon receipt and determination that the request is valid and complete, the Department of Finance (Finance) will contact the requesting agency within ten business days to schedule a date and time for the Meet and Confer session.

To be valid, all Meet and Confer requests must be specifically related to a determination made by Finance and submitted within the required statutory time frame. The requirements are as follows:

- **Housing Asset Transfer** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34176 (a) (2).
- **Due Diligence Review** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter, and no later than **November 16, 2012** for the Low and Moderate Income Housing Fund due diligence review per HSC Section 34179.6 (e).
- **Recognized Obligation Payment Schedule (ROPS)** Meet and Confer requests must be made within five business days of the date of Finance’s determination letter per HSC Section 34177 (m).

Agencies should become familiar with the Meet and Confer Guidelines located on Finance’s website. Failure to follow these guidelines could result in termination of the Meet and Confer session. Questions related to the Meet and Confer process should be directed to Finance’s Dispute Resolution Coordinator at (916) 445-1546 or by email to Redevelopment_Administration@dof.ca.gov.

AGENCY (SELECT ONE):

Successor Agency Housing Entity

AGENCY NAME: Successor Agency to the Costa Mesa Redevelopment Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers Due Diligence Reviews ROPS Period 13-14B

DATE OF FINANCE’S DETERMINATION LETTER: November 8, 2013

REQUESTED FORMAT OF MEET AND CONFER SESSION (SELECT ONE):

Meeting at Finance Conference Call

DETAIL OF REQUEST

A. Summary of Disputed Issue(s) *(Must be specific.)*

1. Item No. 6: The DOF's November 8, 2013 letter disallows the Successor Agency's next scheduled annual loan repayment due to the City in the amount of \$1,299,705. The Successor Agency disagrees with DOF's position that the City/Agency Loan does not fit the express exception and safe harbor wording of Section 34171(d)(2) and comparable provisions in Section 34178(b)(2), and other express provisions of the Dissolution Act that define and allow as an "enforceable obligation" a city/agency loan pursuant to a "loan agreement" or "written agreement" entered into within two (2) years of the creation of the former Redevelopment Agency ("Agency"). As explained in the attached complaint, the Agency entered into a loan/written agreement with the City within two years of the formation of the Agency and it was pursuant to that loan/written agreement that the City advanced funds to the Agency, which the Successor Agency is now obligated to repay under Health and Safety Code sections 34171(d)(2) and 34178(b)(2).

2. Item No. 52 pertains to litigation expenses specifically excluded from the general "Administrative cost allowance" under Health and Safety Code section 34171(b). Specifically, Section 34171(b) provides, in relevant part: "Administrative cost allowances shall exclude any litigation expenses related to assets or obligations, settlements and judgments, and the costs of maintaining assets prior to disposition." Estimated litigation expenses for Enterprise Counsel Group ("ECG") of \$125,000 for January 1 through June 30, 2014 are for litigating the lawsuit the City and Successor Agency filed against the DOF and the Orange County Auditor Controller on October 29, 2013. A copy of the complaint is attached to this form. Future litigation costs are inherently unpredictable and the \$125,000 figure is the Successor Agency's good faith estimate of the amount of fees and related litigation expenses expected to be incurred litigating the attached lawsuit during the specified time period.

B. Background/History *(Provide relevant background/history, if applicable.)*

The Costa Mesa Redevelopment Agency was originally created in January 1972 by two ordinances, City Council Ordinance No. 72-2 proclaiming the need for and creating the Agency and Ordinance No. 72-3 declaring the City Council as the Agency Board. Section 34171(d)(2) expressly provides that "... loan agreements entered into between the redevelopment agency and the city, county, or city and county that created it, within two years of the date of creation of the redevelopment agency, may be deemed to be enforceable obligations." The City Council by Ordinance No. 73-44 adopted on December 24, 1973 approved the original Redevelopment Plan for the Costa Mesa Downtown Redevelopment Project ("Redevelopment Plan"). The Redevelopment Plan expressly authorized and anticipated the City would advance funds to the Agency. (See page 7-8 of the original Redevelopment Plan.) This agreement was a "loan agreement" and "written agreement" "entered into within two years of the formation of the redevelopment agency" within the meaning of Health and Safety Code sections 34171(d)(2) and 34178(b)(2). Pursuant to this authority, from October 7, 1975, through March 16, 1981, the City made a series of cash advances to the Agency, documented by a series of promissory notes (which notes were previously provided to the DOF), but booked and accounted for as a single loan with a revolving balance. In 2004, the City and Agency agreed to an amortization schedule, which the Successor Agency has already provided the DOF, requiring annual loan repayments of \$1,299,705 until 2024 when the loan will be fully repaid.

The Successor Agency disagrees with DOF's interpretation that each promissory note is a separate "loan agreement"; in fact, the City/Agency Loan is rooted in the authority granted pursuant to the Redevelopment Plan, which agreement was entered into within two years of the formation of the

Agency. Copies of all backup documents have been provided to DOF in connection with the "other funds available" due diligence review, including all 36 promissory notes and the amortization schedule for repayment of the City/Agency Loan over the remaining term of the original Project Area and period that tax increment was to flow to the former Agency prior to the Dissolution Act (i.e. ten years after 2014 or 2024).

As evidenced in the documents provided to the DOF the original loan and series, principal and interest due, has had repayment ongoing for the entire period of such loan. The principal amount due under the last promissory note arising from the original note and series was subject to amortized, scheduled repayments that commenced in 1993 and have continued to the present, including the annual amortized repayment made as authorized and approved by DOF through ROPS II.

The DOF properly authorized the annual loan payment for and paid during the ROPS II fiscal period pursuant to the annualized payment schedule. The Successor Agency is informed that DOF has authorized other successor agencies' payments pursuant to an amortized annual schedule. However, the DOF first disapproved the Successor Agency's loan repayment on ROPS 13-14A. As a result, the City and Successor Agency retained counsel, ECG, who have prepared and filed the attached complaint challenging the DOF's determinations.

The Dissolution Act, in particular Health and Safety Code section 34171(b)(2), allows litigation costs concerning "assets or obligations, settlements and judgments" to be itemized and paid from RPTTF separate from the general administrative costs paid under the Administrative cost allowance of \$250,000. The services of ECG in preparing, filing and pursuing the attached complaint are clearly litigation expenses "related to assets or obligations, settlements and judgments" and should be allowed.

C. Justification *(Provide additional attachments to this form, as necessary.)*

The grounds for the Successor Agency's positions on the enforceability of the City's loan to the Agency is fully explained in the attached complaint filed in the Sacramento Superior Court on October 29, 2013, which the Successor Agency is attaching to this form and incorporates those arguments by reference.

The DOF's only ground for disallowing the estimated litigation expenses of \$125,000 to be paid to outside counsel is that "the Agency has not provided sufficient documentation to support the amounts claimed." First, the attached complaint clearly shows substantial litigation expenses likely will be incurred by the Successor Agency - a plaintiff in the lawsuit - in the last half of FY 2013-2014. Second, estimated future litigation costs are inherently unpredictable and \$125,000 is the Successor Agency's best, good faith estimate of expected litigation expenses concerning the attached lawsuit.

Agency Contact Information

Name: Colleen O'Donoghue
Title: Assistant Finance Director
Director

Name: Steve Dunivent
Title: Interim Finance

Phone: (714) 754-5219

Phone: (714) 754-5243

Email: colleen.odonoghue@costamesaca.gov

Email: Steve.Dunivent@costamesaca.gov

Date: November 26, 2013

Date: November 26, 2013

Department of Finance Local Government Unit Use Only

REQUEST TO MEET AND CONFER DATE: APPROVED DENIED

REQUEST APPROVED/DENIED BY: _____ DATE: _____

MEET AND CONFER DATE/TIME/LOCATION: _____

MEET AND CONFER SESSION CONFIRMED: YES DATE CONFIRMED: _____

DENIAL NOTICE PROVIDED: YES DATE AGENCY NOTIFIED: _____
