



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 Community Development Commission as the National City Redevelopment Agency

TYPE OF MEET AND CONFER REQUESTED (SELECT ONE):

Housing Assets Transfers Due Diligence Reviews ROPS Period 3

DATE OF FINANCE’S DETERMINATION LETTER: October 7, 2012

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.)*
See attached

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

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

1. Item No. 86 – Loan from Sewer Fund in the amount of \$760,000.

A. Summary of Dispute: We disagree that the repayment of this loan is not an enforceable obligation. It was an agreement that was entered into in good faith between the City of National City and the Community Development Commission of National City in June of 2010. We expect to qualify for a finding of completion by the spring of 2013, which is during the ROPS III period, and seek to be prepared, subject to Oversight Board approval, to make the scheduled payment on a timely basis. We therefore request that this item remain on the ROPS III subject to the finding of completion and Oversight Board approval.

B. Background: In Fiscal Year 2010-11 the City of National City undertook a \$4.0 million street resurfacing program that was funded in part by a \$1.5 million loan from the Sewer Fund, an enterprise fund of the City of National City. The Community Development Commission of National City committed a total of \$771,250 of tax increment funds towards the street resurfacing project in the form of loan repayments to the Sewer Fund over a three year period.

C. Justification: Delaying the payment to a future ROPS period will incur additional interest expense and put a further strain on the Successor Agency's projected negative cash position.

2. Items No. 10 and 11 – Purchase of replacement yard and associated relocation costs for WI-TOD project

A. Summary of Dispute: The acquisition of a public works yard replacement site and the relocation costs associated with it are integral to the WI-TOD project and are conditions in the recognized DDA. If line items 10 & 11 are disallowed, it will impair the DDA contract and cause severe harm to both the project and the neighborhood that expects this project to break ground within a year.

B. Background: The Paradise Creek Remediation and Westside Infill Transit Oriented Development (WI-TOD) project is an affordable housing project to be built on the site of the National City public works yard adjacent to a light rail station. The project has received state and national recognition as a model for smart growth. The WI-TOD project is the direct result of eight (8) years of community involvement by residents of the Westside neighborhood. WI-TOD is intended to be the catalyst for overall neighborhood change through the Westside Specific Plan (the City's approved plan for the area).

The key local funding comes from redevelopment bond proceeds and accumulated fund balance in the LMIHF. Line items 5-18 on ROPS III are all components of the WI-TOD project and only line items 10 & 11, the relocation costs for the public works yard, have been disallowed. The entire project is the subject of a recognized contract, a disposition and development agreement, with a third party.

Under the Disposition and Development Agreement (DDA) signed on June 21, 2011, between the Community Development Commission (CDC-RDA) and Paradise Creek Partners, L.P., the Community Development Commission of National City is obligated to complete and pay for the Public Works yard relocation and environmental remediation of the subject site. Environmental remediation **cannot** start until the Public Works yard relocation is complete. Therefore, all relocation activities are **integral** to the CDC-RDA's ability to meet its obligations under the DDA.

Over the past four years, the CDC-RDA and the WI-TOD developer have secured significant financing commitments from highly competitive sources totaling over \$41 million – more than 50% of the funds required for successful completion of the WI-TOD project. The outstanding funding pieces are the CDLAC tax-exempt bonds and the federal Low Income Housing Tax Credit, which are projected to be in place in 2013. Some of these funding sources are in jeopardy as the redevelopment dissolution process takes time that was not factored into the project schedule.

The CDC-RDA and the WI-TOD development team have assembled an impressive level of community involvement, financing commitments, environmental review and land use approvals. After over eight (8) years of thoughtful planning, the Westside community is less than one (1) year away from breaking ground on Paradise Creek remediation – **a national and state priority** – and embarking on a transit-oriented redevelopment that will transform the neighborhood.

C. Justification: Under the Disposition and Development Agreement (DDA) signed on June 21, 2011, between the CDC-RDA and Paradise Creek Partners, L.P., the CDC-RDA is obligated to complete and pay for the Public Works yard relocation and environmental remediation of the subject site. Environmental remediation **cannot** start until the Public Works yard relocation is complete. Therefore, all relocation activities are **integral** to the CDC-RDA's ability to meet its obligations under the DDA.

These obligations can be found in the following DDA Sections:

1. Section 4.4 (d): Environmental remediation must be completed by the CDC-RDA
2. Section 4.4 (f): Environmental remediation must be completed by the CDC-RDA
3. Section 4.4 (g): CDC-RDA to complete environmental remediation before Developer's site acquisition
4. Section 4.4 (j): Remediation costs to be separate from Project Costs **AND** if Developer must complete a portion of the scope under the Site Preparation Plan (SPP), the CDC-RDA is obligated to pay for these costs.
5. 11.6 **Conditions for Developer's Benefit for Phase I.** Developer's obligation to ground lease the Phase I Parcel from Commission shall be subject to satisfaction of the following conditions precedent:
 - (n) **Site Clearance.** All improvements have been removed from the Phase I Parcel, including all subsurface elements that must be removed to permit construction of the Phase I Improvements.
6. 12.6 **Conditions for Developer's Benefit for Phase II.** Developer's obligation to ground lease the Phase II Parcel from Commission shall be subject to satisfaction of the following conditions precedent:
 - (m) **Site Clearance.** All improvements have been removed from the Phase II Parcel, including all subsurface elements that must be removed to permit construction of the Phase II Improvements.

The acquisition of a public works yard replacement site and the relocation costs associated with it (ROPS III items 10 & 11) are vital to the WI-TOD project and the recognized DDA and will impair the DDA contract if not recognized as enforceable obligations by DOF.

3. Items No. 43, 57, 94 and 95 – Bond-proceeds projects

A. Summary of Dispute: We understand that under HSC section 34163 (b) the Successor Agency is currently prohibited from entering into contracts for services, construction or other activities regardless of the funding source, which in this case is bond proceeds from a 2011 issuance. We also understand that these items may become enforceable obligations upon receiving a finding of completion from DOF, followed by Oversight Board approval. We expect to qualify for a finding of completion by the spring of 2013, which is during the ROPS III period, and seek to be prepared, subject to Oversight Board approval, to commence construction on these projects at that time. We request that these items remain on the ROPS III subject to the finding of completion and Oversight Board approval.

B. Background: Bonds in the amount of \$39.66 million for these and other community improvement and housing projects listed on the ROPS were issued in March, 2011.

C. Justification: The Successor Agency is committed to delivering completed projects to the residents of National City as expeditiously as possible in accordance with the plans of the CDC-RDA and terms of the 2011 tax allocation bond issuance. It is financially infeasible to defease the bonds. The bonds require the CDC-RDA to carry out the projects in a timely manner pursuant to tax laws. Allowing these four items to remain on the ROPS III on a qualified basis will assist in meeting those commitments.

4. Item 93 – Request to Replenish Reserves and Fund balances from July 2012 True Up payment

A. Summary of Dispute: The Successor Agency had to use funds designated for other obligations to make the DOF mandated true-up payment. To meet those ongoing obligations, those funds must be replenished.

B. Background: The monies characterized by DOF as the true-up payment were not RPPTF at the time they were paid to the then existing Redevelopment Agency. Pursuant to AB26, the then Redevelopment Agency paid enforceable obligations from the tax increment monies, based upon the approved EOPS. Health & Safety Code section 34169(a), (b), and (f) required the then Agency to pay enforceable obligations until February 1, 2012. The then Redevelopment Agency used funds paid during the November through January time period on enforceable obligations identified and approved on the EOPS. After February 1, 2012, the Successor Agency was obligated to continue paying enforceable obligations pursuant to the EOPS and the eventually approved ROPS 1. Accordingly, there was no residual balance to remit to the state. The Successor Agency, however, did pay the demanded amount, under protest, even though there was no residual balance to remit. In order to make the true-up payment, funds obligated to enforceable obligations had to be used to make the payment. Further, because there was no residual balance, the amount of the true-up payment negated all but about \$300,000 of the June 1, 2012 distribution from the RPTTF. Successor Agency cash was further diminished by \$5.8 million in late July as a result of making required debt service payments on bonds. The Successor Agency was forced to use cash in the LMIHF to meet these requirements, leaving an insufficient amount available for other enforceable obligations. In an attempt to rectify this situation, ROPS III item 93 was submitted.

The alternative approach to satisfying the intent of ROPS III item 93 would be to request that RPTTF funds be allowed for certain of the obligations approved in line items 5-18 that were to have come from balances in the LMIHF. Prior to the DOF mandated true-up payment, the Successor Agency had sufficient funds to meet the obligations for the WI-TOD project by using bond proceeds and accumulated amounts in the LMIHF. Due to the true-up payment, the depleted LMIHF no longer has the necessary cash on hand to meet its obligations.

C. Justification: Health & Safety Code section 34167(f) states that there is not to be an interruption of the tax increment to pay enforceable obligations. Not recognizing the disruption of the flow (the true-up) impairs the Successor Agency's ability to pay enforceable obligations, which is inconsistent with this code provision. The monies being identified on line item 93 directly correlate to previously approved enforceable obligations, for which the cash flow was interrupted by the DOF. The Agency is not replenishing reserves, such as those allowed for bond funds, but rather replenishing the cash balances for funds identified for approved enforceable obligations. The effect of using cash on hand to pay for the true-up has caused low-mod funds to be depleted. The low-mod funds are fully committed via a Disposition and Development Agreement, which is a recognized enforceable obligation (See, WI-TOD, lines 5-18).

The Successor Agency is searching for an acceptable method to replenish the cash necessary to meet its obligations and seeks the DOF's assistance in resolving this matter.

5. Item 99 – Pending legal settlement: CYAC v CDC – Amount on Appeal

A. Summary of Dispute: We disagree with DOF's determination that this is requested as a reserve for an anticipated future settlement and therefore not an enforceable obligation.

B. Background: The case began in 2007 and resulted in an adverse decision against the former redevelopment agency via a statement of decision dated April 20, 2011. Thereafter, on November 22, 2011, the court awarded petitioners' attorneys' fees totaling \$ 1,991,169.25. The decision and award of fees were appealed. In addition, petitioners cross-appealed the causes of actions in which they did not prevail. The opening brief was recently filed with the court of appeal. Respondent briefs, cross-appellant briefs, and reply briefs remain due. Given the timing of the briefs, a decision from the court of appeal is expected during the ROPS 3 time period. Accordingly, the amount of the petitioners' attorneys' fees will be part of the appellate court's ruling. As of today, there is an award of attorneys' fees in the approximate amount of \$2M. The award is on appeal with a decision anticipated during ROPS 3.

C. Justification: Health and Safety Code section 34171(d)(1)(D) includes judgments or settlements by a court of law as an enforceable obligation. This item falls within that definition.

6. Item 89 – Legal Services for Oversight Board

A. Summary of Dispute: We disagree that this item should be subject to the administrative cost allowance cap and we believe the law is being applied incorrectly.

B. Background: The Oversight Board sought outside legal counsel to advise them. The OB directed the SA to solicit proposals for such representation and subsequently approved the hiring of a firm.

C. Justification: Health and Safety Code section 34179(c) provides that the Successor Agency "shall pay for the costs of meetings of the oversight board and may include such costs in its administrative budget." Thus, the SA is required to pay for the costs of the meeting, which includes the outside counsel. 34179(c) is a state mandate. 34179(c) does not, however, state which source of funds shall be used or that the funds used shall be subject to the administrative cost allowance cap. The provision says it "may include." Had the legislature wanted to force all such costs to be paid from the administrative allowance, it could have been so written. Moreover, 34177(b) provides the meaning of "administrative cost allowance," but does not state that it applies to state mandates. 34177(b) is designed to address the SA's costs of winding down its affairs, but does not necessarily include the state mandated costs of providing additional legal support. Accordingly, legal services to the OB should not be characterized as an administrative expense subject to the administrative cost allowance cap.

7. Item 90 – Accounting/Audit Support – Due Diligence Reviews

A. Summary of Dispute: We disagree that this item should be subject to the administrative cost allowance cap and we believe the law is being applied incorrectly.

B. Background: AB1484 requires an auditor to be hired, subject to county approval, to perform a due diligence review. The SA hired an auditor, which was approved by the County of San Diego, in compliance with the state's requirement set forth in 34179.5(a).

C. Justification: Health & Safety Code section 34179.5 imposes a state mandate that the SA hire an auditor to perform a due diligence review. 34179.5 does not identify what source of funds must be used to pay for such audit. Health & Safety Code section 34177(b) provides the meaning of “administrative cost allowance” but does not state that it applies to state mandates. 34177(b) is designed to address the SA's costs of winding down its affairs, but does not state that it includes the state mandated costs of providing auditor support. Accordingly, audit services to the SA for the due diligence reviews should not be subject to the administrative cost allowance cap.

8. Item 101 – General Property Management

A. Summary of Dispute: We disagree that this item should be subject to the administrative cost allowance cap and we believe the law is being applied incorrectly.

B. Background: The CDC-RDA owned a variety of real estate assets including historically designated properties that require on going management and maintenance to keep them in working order. Without this work the properties would fall into disrepair and lose their value. The Public Works Department of the City of National City has historically provided general property management and maintenance services for the CDC-RDA assets in a cost efficient manner.

C. Justification: These expenses fall under the “costs of maintaining assets prior to disposition” provision of HSC section 34171 (d) (1) (F) and as such, are not administrative in nature. The Successor Agency believes that it would be financially prudent to continue utilizing the services of the National City Public Works Department to maintain the CDC-RDA assets.

9. Item 144 – Contract for Legal Services

A. Summary of Dispute: We disagree that this item should be subject to the administrative cost allowance cap and we believe the law is being applied incorrectly.

B. Background: This item includes litigation expenses related to the obligations of the SA. Health & Safety Code section 34171(b) allows such expenses to be paid outside of the administrative cost allowance cap.

C. Justification: Health and Safety Code section 34171(b) provides that litigation expenses related to obligations are excluded from the administrative cost allowance. As this item is for the litigation expenses related to the SA seeking funds to meet its obligations, this item should not be subject to the administrative cost allowance.

10. Apparent Error for Item #31. In the DOF letter there is a reference to Item #31 relating to general legal representation being considered an administrative expense. Item #31 is related to a project cost and not a legal expense. It is assumed that is an error.

Agency Contact Information

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Department of Finance Local Government Unit Use OnlyREQUEST 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: _____

Form DF-MC (Revised 9/10/12)