

AGREEMENT NO. 20-27

FIRST AMENDMENT TO AGREEMENT NO. 17-76

THIS FIRST AMENDMENT TO AGREEMENT NO. 17-76 (this “First Amendment”) is entered into as of April 6, 2020, by and between the City of Montclair, a Municipal Corporation (“City”) and Montclair Plaza Lane Owner, LLC, a Delaware limited liability company (“Applicant”). In consideration of the mutual covenants and conditions set forth in Agreement No. 17-76 and herein, the parties agree as follows:

RECITALS

A. The City and Applicant executed a Reimbursement Agreement on January 8, 2018 regarding reimbursement of fees incurred by the City related to the professional services necessary to develop the Montclair Place District Specific Plan.

B. The City retained the services of three professional consulting firms (“Consultants”) to provide the needed expertise and information necessary for the City’s review process concerning the proposed Project.

C. The City and Applicant now propose to document previously approved reimbursable costs for additional consultant services into Agreement No. 17-76 and to include the services of an additional Consultant, David Evans and Associates, Inc., to provide expertise and information pursuant to Section 4 of the Agreement.

NOW THEREFORE, the City and Applicant hereby agree as follows:

1. Section 4 of Agreement No. 17-76 shall be amended to read as follows:

4. City's Selection of Consultants. The City has retained the following as Consultants pursuant to this Agreement, but may retain additional Consultants or sub-consultants pursuant to the terms of this Agreement: (1) Dudek & Associates, Inc. (environmental and traffic) including any sub-consultants determined by Dudek & Associates, Inc. and City to be necessary; (2) Moule & Polyzoides Architects (planning and design); (3) Best Best & Krieger LLP (legal services) and (4) David Evans and Associates, Inc. (sewer capacity analyses). The City will provide Applicant with written notice of any additional Consultants or sub-consultants engaged within ten (10) days of that engagement; provided, however, any engagement that would result in a Change in Scope (defined in Section 5) shall be subject to the terms and conditions of Section 5.

2. Section 5.1 of Agreement No. 17-76 shall be amended to read as follows:

5.1 Estimated Costs; Deposit Account: The City has reviewed the scope of work required and the estimated aggregated initial costs for all consultant work were \$983,982. In addition to the initial costs, the City and Applicant have approved supplemental services by Dudek in the amount of \$128,410 and by Moule & Polyzoides in the amount of \$10,000. The consultant services to be provided by David Evans and Associates, Inc. are estimated to be no more than \$7,700. Total estimated costs for consultant services are estimated at One Million One Hundred Thirty Thousand and Ninety-Two Dollars (\$1,130,092) (the "**Estimated Costs**"). Notwithstanding the details provided for the Estimated Costs, the Estimated Costs also include Costs expended by the City for the Project that were incurred prior to the submittal of a formal application, and a portion of the Estimated Costs will be used to reimburse the City for its previous Costs. Within forty-five (45) calendar days after the execution of this Agreement, the Applicant shall submit a deposit in the amount of One Hundred Thousand Fifty Dollars (\$150,000) to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account (the "**Deposit Account**").

3. Exhibit B-Scope of Services for Consultants and Exhibit C-Estimated Costs for Each Consultant are hereby amended and attached to this First Amendment to Agreement No. 17-76.

4. Except as provided above, all other terms of Agreement No. 17-76 shall remain in full force and effect as written. All terms used herein and not defined but defined in Agreement No. 17-76 shall have the meaning given to such terms therein.

5. This First Amendment shall become effective as of April 6, 2020.

IN WITNESS WHEREOF, the City and Consultant have executed this First Amendment as of the date set forth above.

CITY
CITY OF MONTCLAIR,
a Municipal Corporation

By: _____
Name: Javier "John" Dutrey
Its: Mayor
Date: _____

ATTEST:

Andrea M. Phillips
City Clerk

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

APPLICANT
5060 MONTCLAIR PLAZA LANE
OWNER, LLC
a Delaware Limited Liability
Company

By: _____
Name: _____
Its: _____
Date: _____

EXHIBIT B

SCOPE OF SERVICE FOR CONSULTANTS

DUDEK

Any and all environmental and traffic engineering services needed for the Project, including CEQA compliance, and all needed experts or sub-consultants as described in the Scope of Work submitted by Dudek & Associates. (See Exhibit B-1)

MOULE & POLYZOIDES ARCHITECTS

Any and all architectural other design services needed for the Project, including but not limited to needed experts or sub-consultants. Any and all land use planning services related to the development of the specific plan document, as described in the Scope of Work submitted by Moule & Polyzoides Architects. (See Exhibit B-2)

BEST BEST KRIEGER LLP

Any and all legal services as needed for the Project, including, but not limited to, review of the environmental documents, specific plan and related documents and any City approval documents needed for the Project.

DAVID EVANS AND ASSOCIATES LLC

Provide any and all analyses, reports or studies of the City Sewer Master Plan and develop peak/worst case scenarios for the sewer system given project proposal. Evaluate sewer generation levels where sewer capacity would become deficient compared to future scenario models. Provide project management and administrative functions related to sewer analyses. (See Exhibit B-3)

OTHER CONSULTANTS

Any and all other consultants determined by the City to be reasonably necessary for its review and processing of the Project application(s).

EXHIBIT C

ESTIMATES COSTS FOR EACH CONSULTANT

DUDEK

Dudek & Associates' current published rates for an initial total estimated amount of \$267,982.54. Amendments to the scope of work are estimated at \$128,410.00. Total estimated amount of consultant agreement is \$396,392.54.

MOULE & POLYZOIDES ARCHITECTS

Moule & Polyzoides Architects' current published rates for an initial total estimated amount of \$543,000. An addition to the scope of work is estimated at \$10,000. Total estimated amount of consultant agreement is \$553,000.

BEST BEST KRIEGER LLP

Standard private rates per attorney (minus 10% discount) for a total estimated amount of \$173,000.

DAVID EVANS AND ASSOCIATES LLP

David Evans and Associates rate for the sewer system analyses is a fixed fee of \$7,500 not including expenses. Expenses are not anticipated to exceed \$200.00.

OTHER CONSULTANTS

To be determined.