

**CITY OF MONTCLAIR
AGENDA FOR CITY COUNCIL, SUCCESSOR AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

To be held in the Council Chambers
5111 Benito Street, Montclair, California

February 19, 2019

7:00 p.m.

As a courtesy, please silence your cell phones and other electronic devices while the meeting is in session.

Persons wishing to speak on an agenda item, including closed session items, are requested to complete a yellow Speaker Information Card located at the entrance of the Council Chambers and present it to the City Clerk prior to consideration of the item. The Mayor/Chair (or the meeting's Presiding Officer) will recognize those who have submitted a card at the time of the item's consideration by the City Council/Board of Directors/Commissioners, and speakers may approach the podium to provide comments on the item at that time.

Audio recordings of the CC/SA/MHC/MHA/MCF meetings are available on the City's website at www.cityofmontclair.org and can be accessed by the end of the next business day following the meeting.

- I. CALL TO ORDER** City Council [CC], Successor Agency Board [SA],
Montclair Housing Corporation Board [MHC],
Montclair Housing Authority Commission [MHA],
Montclair Community Foundation Board [MCF]

II. INVOCATION

In keeping with our long-standing tradition of opening our Council meetings with an invocation, this meeting may include a nonsectarian invocation. Such invocations are not intended to proselytize or advance any faith or belief or to disparage any faith or belief. Neither the City nor the City Council endorses any particular religious belief or form of invocation.

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. Ceremonial Swearing-In of Newly Appointed Council Member Tenice Johnson
- B. Recognition of Monte Vista Water District Poster Contest Winners Hannah and Logan Guthrie
- C. Introduction of Public Works Department Promotee — National Pollutant Discharge Elimination System (NPDES) Inspector Marissa Pereyda

VI. PUBLIC HEARINGS

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- A. Consider Projects and Prioritization of Funding for the Fiscal Year 2019-2020 Community Development Block Grant Program [CC] 5
- B. Second Reading – Consider Adoption of Ordinance No. 19-981 Updating Section 8.32.010 of the Montclair Municipal Code Related to Maximum Speed Limits in the City [CC] 6

VII. PUBLIC COMMENT

This section is intended to provide members of the public with an opportunity to comment on any subject that does not appear on this agenda. Each speaker will be afforded up to five minutes to address the City Council/Boards of Directors/Commissioners. (Government Code Section 54954.3)

Under the provisions of the Brown Act, the meeting bodies are prohibited from participating in substantial discussion of, or taking action on items not listed on the agenda.

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Regular Joint Meeting — February 4, 2019 [CC/SA/MHC/MHA/MCF]

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9. Consider Setting a Public Hearing for Monday, March 4, 2019, at 7:00 p.m. in the City Council Chambers to Consider the Following: Ordinance No. 19-980 Adding Chapter 9.105 to the Montclair Municipal Code (MMC) Pertaining to the Installation of Wireless "Small Cell" Technology Within the Public Right-of-Way, Amending Chapter 9.02 of the MMC to Add Definitions, and Amending a Portion of Chapter 11.73 of the MMC to Eliminate Conflicting Language [CC] Adoption of Resolution No. 19-3228 Establishing Design Guidelines for Small Cell Facilities Within the Public Right-of-Way [CC] Adoption of Resolution No. 19-3229 Establishing Permit Fees, Appeal Fees, and Other Fees Relating to Small Cell Facilities Within the Public Right-of-Way [CC]	18
10. Consider Receiving and Filing a Status Report on Emergency Contracting Procedures Related to Wood Floor Restoration in the Community Center [CC] Consider Declaring a Termination to the Emergency Action Authorized Under Resolution No. 19-3226 [CC] Consider Approval of the Filing of a Notice of Completion for the Emergency Repairs [CC]	42
11. Consider Authorizing a \$6,350 Appropriation from the Proposition 30/AB 109 Fund to Purchase Food, Hotel Accommodations, and Promotional Items for the Every 15 Minutes Program to be Held at Montclair High School [CC]	44
C. Agreements	
1. Consider Award of Contract for the Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project to OCC Builders, Inc., in the Amount of \$110,000 [CC] Consider Approval of Agreement No. 19-12 with OCC Builders, Inc., for Construction of the Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project [CC] Consider Authorization of a \$15,000 Construction Contingency [CC]	45

2.	Consider Approval of a Rectangular Rapid Flashing Beacon Improvement Plan – Benson Avenue and J Street [CC]	
	Consider Approval of Agreement No. 19-13 with the City of Ontario for the Installation of a Rectangular Rapid Flashing Beacon at Benson Avenue and J Street [CC]	
	Consider Authorizing a \$10,000 Appropriation from the Local Development Impact Fee Fund for Costs Related to Agreement No. 19-13 [CC]	52
3.	Consider Approval of Agreement No. 19-14 with Richmond American Homes of Maryland, Inc., a Grant Deed for Land Improved as Public Right-of-Way (Assessor's Parcel Nos. 1009-153-58, 1009-153-59, and 1009-153-60) [CC]	62
4.	Consider Approval of Agreement No. 19-15 with the Zappia Law Firm to Provide Legal and Consulting Services Related to Litigation and Industrial Disability Retirement Matters [CC]	69
5.	Consider Approval of Agreement No. 19-16 with South Coast Air Quality Management District for the Installation of Eight Electric Vehicle Charging Stations at City Facilities [CC]	75
D.	Resolutions	
1.	Consider Adoption of Resolution No. 19-3227 Declaring Support for and Execution of the Memorandum of Understanding Between Inland Empire Utilities Agency and Various Chino Basin Stakeholders (Agreement No. 19-17) for Participation in Development of the Chino Basin Program [CC]	92
2.	Consider Adoption of Resolution No. 19-3230 Amending the Master User Fee Schedule to Add a Credit Card Convenience Fee [CC]	98
IX.	PULLED CONSENT CALENDAR ITEMS	
X.	BUSINESS ITEMS — None	
XI.	RESPONSE — None	
XII.	COUNCIL WORKSHOP	
A.	Fiscal Year 2018-19 Midyear Budget Review [CC]	
	<i>(The City Council may consider continuing this item to an adjourned meeting on Thursday, February 21, 2019, at 6:00 p.m. in the City Council Chambers)</i>	
B.	Inland Empire Utilities Agency Presentation — Chino Basin Program and Regional Sewer Contract Update [CC]	
	<i>(The City Council may consider continuing this item to an adjourned meeting on Monday, March 4, 2019, at 5:45 p.m. in the City Council Chambers)</i>	
XIII.	COMMUNICATIONS	
A.	City Department Reports — None	
B.	City Attorney	
C.	City Manager/Executive Director	
D.	Mayor/Chairperson	
E.	Council/SA Board/MHC Board/MHA Commission/MCF Board	

F. Committee Meeting Minutes *(for informational purposes only)*

1. Personnel Committee Meeting— February 4, 2019 [CC]

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XIV. CLOSED SESSION — None

XV. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, March 4, 2019, at 7:00 p.m. in the Council Chambers.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the Acting Bodies after distribution of the Agenda packet are available for public inspection in the City Clerk's Office at 5111 Benito Street, Montclair, California, between 7:00 a.m. and 6:00 p.m., Monday through Thursday.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. Phillips, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the bulletin board adjacent to the north door of Montclair City Hall, 5111, Benito Street on February 14, 2019.



AGENDA REPORT

DATE:	FEBRUARY 19, 2019	FILE I.D.:	GRT050
SECTION:	PUBLIC HEARINGS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	A	PREPARER:	C. CALDWELL
SUBJECT:	CONSIDER PROJECTS AND PRIORITIZATION OF FUNDING FOR THE FISCAL YEAR 2019-2020 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM		

REASON FOR CONSIDERATION: Each fiscal year, the City of Montclair is required to conduct a public hearing to prioritize funding for various competing Community Development Block Grant (CDBG) projects. This hearing is conducted in compliance with requirements of the Department of Housing and Urban Development (HUD) and the County of San Bernardino Department of Community Development and Housing (CDH).

BACKGROUND: The total funding available for Montclair's Fiscal Year 2019-2020 CDBG Program has tentatively been determined to be \$216,259, which is approximately five percent less than the City's CDBG allotment in Fiscal Year 2018-2019.

CDBG restrictions limit the amount of funding for "public service" activities to 15 percent of the City's estimated annual allocation. Staff is recommending a continuance of funding for public service activities that include graffiti abatement and the Golden Express Transportation program. It should be noted that no outside agencies requested CDBG funding from Montclair this year.

For the upcoming fiscal year, staff recommends the City Council approve the projects and funding levels summarized as follows:

Code Enforcement Program.....	50,000
Historic Preservation of the Reeder Ranch — ADA Compliance Project Design and Construction Project.....	133,821
Graffiti Abatement.....	22,438
Senior Transportation Services (Golden Express Transportation).....	10,000
<hr/>	
TOTAL <u>\$216,259</u>	

FISCAL IMPACT: The City expects to receive \$216,259 for the Fiscal Year 2019-2020 CDBG Program.

RECOMMENDATION: Staff recommends the City Council approve the above projects and prioritization of funding for the Fiscal Year 2019-2020 CDBG Program.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: TRC625

SECTION: PUBLIC HEARINGS

DEPT.: PUBLIC WORKS

ITEM NO.: B

PREPARER: N. CASTILLO

SUBJECT: SECOND READING - CONSIDER ADOPTION OF ORDINANCE NO. 19-981 UPDATING SECTION 8.32.010 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO MAXIMUM SPEED LIMITS IN THE CITY

REASON FOR CONSIDERATION: The California Motor Vehicle Code allows cities to set speed limits on city streets, subject to the process set forth in that Code. Speed limits must be determined by traffic engineering speed surveys and must be redone periodically. Once a speed survey has been completed, the City may set the speed limits by adopting an ordinance. Ordinances require public hearings and adoption by the City Council.

BACKGROUND: The City last performed a citywide speed survey in 2011 and adopted Ordinance No. 11-925 amending Section 8.32.010 of the Montclair Municipal Code relating to maximum speed limits. In 2014, it was discovered that Howard Street was not included in the list of streets surveyed at that time. Therefore, a special survey was conducted between 2014 and 2015 in order to provide proper speed enforcement on Howard Street. Ordinance No. 15-954 was adopted, replacing section 8.32.010 of the Montclair Municipal Code pertaining to maximum speed limits in the City.

Under California law, the maximum speed limit in urban areas is 55 miles per hour (MPH) on 2-lane undivided roads and 65 MPH on divided or multi-lane roads. All other speed limits are prima facie limits, which are considered by law to be safe and prudent under normal conditions. Certain prima facie limits are established by state law, including the 25 mile per hour speed limit in business and residential districts; the 25 mile per hour speed limit in school zones when children are present; and the 15 mile per hour speed limit in alleys and at uncontrolled intersections and railroad crossings where visibility is very limited. These speed limits do not need to be posted to be enforced.

All other speed limits between 25 and 65 MPH are established on the basis of traffic engineering surveys and adopted by ordinance by the City Council. These surveys include an analysis of roadway conditions, accident records, and a sampling of the prevailing speed of traffic. Speed limits are generally considered safe and reasonable when they are set equal to or slightly below the speed at which 85 percent of the drivers drive. Traffic flowing at uniform speeds results in increased safety and fewer accidents. Drivers are less impatient, pass less often, and tailgate less, which reduces both head-on and rear-end collisions.

Most drivers can be relied upon to behave in a reasonable manner as they go about their daily driving routines. Many existing laws reflect observation of the way reasonable people behave under most circumstances. Traffic regulations are also based upon observations of the behavior of groups of motorists under various conditions. Generally speaking, traffic laws that reflect the behavior of the majority of motorists are found to be successful. Laws that arbitrarily restrict the majority of drivers tend to encourage disrespect, lack of public support, and other wholesale violations of the law.

This is especially true when establishing speed limits. The posting of the appropriate speed limit also simplifies the job of traffic enforcement officers. Most traffic is voluntarily moving at or near the posted speed. Blatant speeders are easily spotted, safe drivers are not penalized, and patrol officers are not asked to enforce and defend unrealistic and arbitrary speed limits.

In accordance with the Motor Vehicle Code, the 2018 Speed Survey Study for the City of Montclair was conducted between September 2017 and December 2018. Radar speed checks were performed by Montclair Police Department personnel.

Based on the traffic engineering speed survey and analysis, all existing speed limits in the City will remain the same. The only changes to result from the speed survey are the limits of the Central Avenue and Mills Avenue segments. Central Avenue will now be divided from north City limits to Holt Boulevard and from Holt Boulevard to Phillips Boulevard. Central Avenue was previously divided by Mission Boulevard for the purpose of speed limits. Mills Avenue will now be divided from Moreno Street to San Bernardino Street and from San Bernardino Street to the UPRR tracks. Mills Avenue was previously divided by San José Street for the purpose of speed limits.

FISCAL IMPACT: The City Council's adoption of Ordinance No. 19-981 would have no fiscal impact.

RECOMMENDATION: Staff recommends the City Council adopt Ordinance No. 19-981 updating Section 8.32.010 of the Montclair Municipal Code related to maximum speed limits in the City.

ORDINANCE NO. 19-981

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MONTCLAIR REPLACING SECTION 8.32.010 OF
TITLE 8 OF THE MONTCLAIR MUNICIPAL CODE
RELATING TO MAXIMUM SPEED LIMITS

THE CITY COUNCIL OF THE CITY OF MONTCLAIR DOES ORDAIN AS FOLLOWS:

Section 1: Amendment to Code. Section 8.32.010 of Title 8 of the Montclair Municipal Code is hereby replaced with the following:

8.32.010 Prima facie speed limits on certain streets

The City Council of the City of Montclair determines and declares, upon the basis of engineering and traffic surveys made on or after September 2017, which surveys are public records on file in the offices of the Engineering Division of the Public Works Department of the City, that the prima facie speed limits specified in those sections are reasonable, safe, and most appropriate to facilitate the orderly movement of traffic upon the streets and portions of streets specified in those sections, which streets and portions of streets would otherwise be subject to the prima facie speed limits established in the California Vehicle Code.

These prima facie speed limits shall be effective when appropriate signs giving notice thereof are erected upon the streets and portions of streets to which they pertain.

The provisions of this article shall not apply to any twenty-five (25) mile per hour prima facie speed limit which is applicable when passing a school or the grounds thereof.

Name of Street or Portion of Street Affected	Declared Prima Facie Speed Limit (miles per hour)
1. Arrow Highway, from the west City Limits to Benson Avenue	45 miles per hour
2. Benito Street, from Mills Avenue to Benson Avenue	35 miles per hour
3. Benson Avenue, from north City Limits to Moreno Street	40 miles per hour
4. Benson Avenue, from Moreno Street to UPRR tracks	35 miles per hour
5. Brooks Street, from Silicon Avenue to Benson Avenue	40 miles per hour
6. Central Avenue, from the north City Limits to Holt Boulevard	40 miles per hour
7. Central Avenue, from Holt Boulevard to Phillips Boulevard	45 miles per hour
8. Fremont Avenue, from Arrow Highway to Moreno Street	40 miles per hour
9. Fremont Avenue, from State Street to Mission Boulevard	35 miles per hour
10. Fremont Avenue, from Mission Boulevard to Phillips Boulevard	30 miles per hour
11. Holt Boulevard, from Mills Avenue to Benson Avenue	45 miles per hour
12. Howard Street, from Pipeline Avenue to Central Avenue	35 miles per hour
13. Kingsley Street, from Mills Avenue to Benson Avenue	35 miles per hour
14. Mills Avenue, from Moreno Street to the San Bernardino Street	40 miles per hour
15. Mills Avenue, from San Bernardino Street to the UPRR tracks	45 miles per hour
16. Mission Boulevard, from the west City Limits to Central Avenue	45 miles per hour
17. Monte Vista Avenue, from north City Limits to Arrow Highway	45 miles per hour
18. Monte Vista Avenue, from Arrow Highway to San Bernardino Street	40 miles per hour
19. Monte Vista Avenue, from San Bernardino Street to Holt Boulevard	35 miles per hour

Name of Street or Portion of Street Affected	Declared Prima Facie Speed Limit (miles per hour)
20. Monte Vista Avenue, from Holt Boulevard to Phillips Boulevard	40 miles per hour
21. Moreno Street, from Mills Avenue to Monte Vista Avenue	35 miles per hour
22. Moreno Street, from Monte Vista Avenue to Benson Avenue	40 miles per hour
23. Orchard Street, from Mills Avenue to Benson Avenue	40 miles per hour
24. Palo Verde Street, from Mills Avenue to Helena Avenue	40 miles per hour
25. Palo Verde Street, from Monte Vista Avenue to Central Avenue	40 miles per hour
26. Palo Verde Street, from Central Avenue to Benson Avenue	35 miles per hour
27. Ramona Avenue, from Palo Verde Street to Holt Boulevard	35 miles per hour
28. Ramona Avenue, from Holt Boulevard to Phillips Boulevard	40 miles per hour
29. Richton Street, from Monte Vista Avenue to Central Avenue	40 miles per hour
30. San Bernardino Street, from Mills Avenue to Benson Avenue	40 miles per hour
31. San José Street, from Mills Avenue to Monte Vista Avenue	35 miles per hour
32. San José Street, from Central Avenue to Benson Avenue	35 miles per hour
33. State Street, from the west City Limits to Benson Avenue	45 miles per hour

Section 2: Validity. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

Section 3: Publication. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2019.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 19-981 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2019, and finally passed not less than five (5) days thereafter on the XX day of XX, 2019, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk



AGENDA REPORT

DATE: FEBUARY 19, 2019

FILE I.D.: FIN520

SECTION: ADMIN. REPORTS

DEPT.: ADMIN. SVCS.

ITEM NO.: 1

PREPARER: J. KULBECK

SUBJECT: CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2019.

FISCAL IMPACT: Routine—report of City's cash and investments.

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending January 31, 2019.



AGENDA REPORT

DATE:	FEBRUARY 19, 2019	FILE I.D.:	FIN540
SECTION:	ADMIN. REPORTS	DEPT.:	ADMIN. SVCS./FINANCE
ITEM NO.:	2	PREPARER:	A. PHILLIPS/L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Warrant Register and Payroll Documentation.

BACKGROUND: Mayor Pro Tem Raft has examined the Warrant Register dated February 19, 2019; and the Payroll Documentation dated February 3, 2019; and recommends their approval.

FISCAL IMPACT: The Warrant Register dated February 19, 2019, totals \$1,059,573.97; and the Payroll Documentation dated February 3, 2019, totals \$621,109.90 gross, with \$437,584.01 net being the total cash disbursement.

RECOMMENDATION: Staff recommends the City Council approve the above-referenced Warrant Register and Payroll Documentation.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN510

SECTION: ADMIN. REPORTS

DEPT.: SUCCESSOR RDA

ITEM NO.: 3

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT

REASON FOR CONSIDERATION: City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending January 31, 2019.

FISCAL IMPACT: Routine—report of the Agency's cash.

RECOMMENDATION: Staff recommends the City Council acting as Successor to the Redevelopment Agency Board of Directors receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending January 31, 2019.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN530

SECTION: ADMIN. REPORTS

DEPT.: SUCCESSOR RDA

ITEM NO.: 4

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Successor to the Redevelopment Agency Warrant Register dated 01.01.19–01.31.19 in the amounts of \$55,455.02 for the Combined Operating Fund; \$3,784,040.00 for the Redevelopment Obligation Retirement Funds and finds it to be in order.

FISCAL IMPACT: Routine—report of Agency's obligations.

RECOMMENDATION: Vice Chairperson Raft recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending January 31, 2019.



AGENDA REPORT

DATE: FEBUARY 19, 2019

FILE I.D.: FIN525

SECTION: ADMIN. REPORTS

DEPT.: MHC

ITEM NO.: 5

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT

REASON FOR CONSIDERATION: Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2019.

FISCAL IMPACT: Routine—report of the Montclair Housing Corporation's cash and investments.

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending January 31, 2019.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN545

SECTION: ADMIN. REPORTS

DEPT.: MHC

ITEM NO.: 6

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 01.01.19-01.31.19 in the amount of \$49,268.13 for the Montclair Housing Corporation and finds it to be in order.

FISCAL IMPACT: Routine—report of Montclair Housing Corporation's obligations.

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending January 31, 2019.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN525

SECTION: ADMIN. REPORTS

DEPT.: MHA

ITEM NO.: 7

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Included in your agenda packet is a copy of the Treasurer's Report for the period ending January 31, 2019.

FISCAL IMPACT: Routine—report of the Montclair Housing Authority's cash.

RECOMMENDATION: Staff recommends the Montclair Housing Authority Board of Directors receive and file the Treasurer's Report for the month ending January 31, 2019.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN545

SECTION: ADMIN. REPORTS

DEPT.: MHA

ITEM NO.: 8

PREPARER: C. RAMIREZ

SUBJECT: CONSIDER APPROVAL OF WARRANT REGISTER

REASON FOR CONSIDERATION: The Montclair Housing Authority Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending January 31, 2019, pursuant to state law.

BACKGROUND: Vice Chairperson Raft has examined the Warrant Register dated 01.01.19–01.31.19 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

FISCAL IMPACT: Routine—report of Montclair Housing Authority's obligations.

RECOMMENDATION: Vice Chairperson Raft recommends the Montclair Housing Authority Board of Directors approve the Warrant Register for the period ending January 31, 2019.



AGENDA REPORT

DATE: FEBRUARY 19, 2019 **FILE I.D.:** CDV079
SECTION: ADMIN. REPORTS **DEPT.:** COMMUNITY DEV.
ITEM NO.: 9 **PREPARER:** M. DIAZ
SUBJECT: CONSIDER SETTING A PUBLIC HEARING FOR MONDAY, MARCH 4, 2019, AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS TO CONSIDER THE FOLLOWING:

ORDINANCE NO. 19-980 ADDING CHAPTER 9.105 TO THE MONTCLAIR MUNICIPAL CODE (MMC) PERTAINING TO THE INSTALLATION OF WIRELESS "SMALL CELL" TECHNOLOGY WITHIN THE PUBLIC RIGHT-OF-WAY, AMENDING CHAPTER 9.02 OF THE MMC TO ADD DEFINITIONS, AND AMENDING A PORTION OF CHAPTER 11.73 OF THE MMC TO ELIMINATE CONFLICTING LANGUAGE

ADOPTION OF RESOLUTION NO. 19-3228 ESTABLISHING DESIGN GUIDELINES FOR SMALL CELL FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY

ADOPTION OF RESOLUTION NO. 19-3229 ESTABLISHING PERMIT FEES, APPEAL FEES, AND OTHER FEES RELATING TO SMALL CELL FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY

REASON FOR CONSIDERATION: Amendments to the Montclair Municipal Code require public hearing review and approval by the City Council.

A copy of proposed Ordinance No. 19-980 and Resolution No. 19-3228 adopting design guidelines related to small cell facilities within the public right-of-way are attached for the City Council's review.

Proposed Resolution No. 19-3229 establishing permit fees, appeal fees, and other fees relating to small cell facilities within the public right-of-way is being developed by staff and the proposed Resolution will be available prior to the March 4, 2019 meeting.

BACKGROUND: "Small Cell" antennas/facilities are the next generation of wireless technology used in conjunction with existing macro wireless network (e.g., "monopine" or "monopalm" wireless facilities) to meet the growing need for data capacity and speed, particularly in populous areas throughout the country. To ensure that Congress' desire to implement a consistent national policy framework to guide the deployment of next-generation wireless facilities, the Federal Communications Commission (FCC) issued a ruling on September 26, 2018, which mandates that local governments allow wireless providers the use the public right-of-way to locate small cell facilities. Typical small installations would occur on existing utility poles and light standards. When necessary, the installation of new freestanding poles would be an option. The FCC ruling became effective on January 14, 2019.

The FCC ruling allows local governments to set standards that address specific public safety concerns, and aesthetic standards that are reasonable, objective, and published in advance. Proposed Ordinance No. 19-980 and the Design Guidelines would provide a process and standards for deploying small cell facilities within the public right-of-way

of the City, consistent with the FCC's ruling. Local governments have until April 14, 2019, to develop an ordinance and design guidelines.

The proposed Ordinance and separate set of Design Guidelines are prepared for City Council review. If the proposed Ordinance is approved, then the Council would be asked to adopt a separate resolutions to approve the set of Design Guidelines and Fees.

FISCAL IMPACT: The cost to publish a Notice of Public Hearing in the Inland Valley Daily Bulletin newspaper related to Ordinance No. 19-980 is approximately \$500.

RECOMMENDATION: Staff recommends the City Council set a public hearing for Monday, March 4, 2019, at 7:00 p.m. in the City Council Chambers to consider the following:

1. Ordinance No. 19-980 adding Chapter 9.105 to the Montclair Municipal Code (MMC) pertaining to the installation of wireless "small cell" technology within the public right-of-way, amending Chapter 9.02 of the MMC to add definitions, and amending a portion of Chapter 11.73 to eliminate conflicting language; and
2. Adoption of Resolution No. 19-3228 establishing Design Guidelines for small cell facilities within the public right-of-way; and
3. Adoption of Resolution No. 19-3229 establishing permit fees, appeal fees, and other fees relating to small cell facilities within the public right-of-way.

ORDINANCE NO. 19-980

**AN ORDINANCE OF THE CITY OF MONTCLAIR CALIFORNIA,
ADDING CHAPTER 9.105 TO THE MONTCLAIR MUNICIPAL CODE
PERTAINING TO THE INSTALLATION OF WIRELESS "SMALL CELL"
TECHNOLOGY WITHIN THE PUBLIC RIGHT-OF-WAY; AMENDING
CHAPTER 9.02 TO ADD DEFINITIONS; AND AMENDING A
PORTION OF CHAPTER 11.73 TO ELIMINATE CONFLICTING
LANGUAGE**

WHEREAS, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, the Telecommunications Act of 1996 makes it unlawful for local government to prohibit, or have the effect of prohibiting, the "provision of personal wireless service," prevents local government from "unreasonably discriminating among providers of functionally equivalent services," and requires that local government "act on any authorization to place, construct or modify wireless service facilities within a reasonable period of time; and

WHEREAS, the next generation of wireless technology increasingly being deployed is typically referred to as "small cells;" and

WHEREAS, generally, the term "small cell" refers to the smaller coverage area of the wireless signal rather than the traditional macro-cell towers that can cover miles in each direction; and

WHEREAS, small cell facilities are often proposed to be attached to structures within public rights-of-way (ROW), including utility and light poles and other street furniture; and

WHEREAS, on October 15, 2018, the Federal Register published Federal Communications Commission (FCC) order on the *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (hereafter referred to as FCC 18-133); and

WHEREAS, the intent of FCC 18-133 is to implement Congress's vision for a consistent national policy framework to guide the deployment of next-generation of wireless facilities across the nation; and

WHEREAS, among other things, FCC 18-133 places new limitations on local authority to regulate small cells including new shot clocks for acting on applications and limits on fees which went into effect on January 14, 2019, and limits on aesthetic standards which go into effect on April 15, 2019; and

WHEREAS, the existing wireless regulations in Chapter 11.73 of the Montclair Municipal Code do not fully address the topic of small cell wireless telecommunication facilities being installed within the public right-of-way and the limitations in FCC 18-133; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of small cells and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, pursuant to Sections 9.16.010 and 9.16.100 of the Montclair Municipal Code the City Engineer is authorized to review and approve all work conducted within the public right-of-way, including the erection of utility poles for the stringing of wires for telephone, telegraph or electrical service, or for any other purpose; and

WHEREAS, this ordinance adds Chapter 9.105 to Chapter 9 of the Municipal Code to address small cell wireless telecommunication facilities being installed within the public right-of-way and requiring that such facilities comply with design guidelines and applicable fees as adopted by separate resolutions of the City Council; and

WHEREAS, this ordinance adds to the glossary of Chapter 9.02 a series of new terms related to this subject; and

WHEREAS, Chapter 11.73 contains conflicting language on regulation of wireless in the public right-of-way which is removed by this ordinance.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Montclair as follows:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION II. The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add new definitions to Chapter 9.02 ACRONYMS AND DEFINITIONS, Section 9.02.020 (Definitions) as follows:

Abandoned means any Small Cell Facilities or Wireless Support Structures that are unused for a period of one hundred eighty (180) days without the Operator otherwise notifying the City and receiving the City's approval.

Antenna means communications equipment that transmits or receives radio frequency signals.

Applicant means any Person applying for a Small Cell Permit under Chapter 9.105.

Base Station shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1).

Collocation or **Collocate** means the same as defined by the Federal Communications Commission in 47 C.F.R. § 1.6002(g)(1) and (2), as may be amended.

Decorative Pole means a pole, arch, or other structure, except for a street light pole, placed in the public right-of-way that is specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; (c) temporary holiday or special event attachments.

Design Standards means those detailed design standards, specifications and examples adopted by the City Council pursuant to Chapter 9.105 related to the design and installation of Small Cell Facilities.

Eligible Facilities Request shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3).

Meter Pedestal means the housing for the main source of power and distribution of panels for building, streetlights, parks and other uses.

Permittee means the Applicant issued a Small Cell Permit pursuant to this Chapter.

Person means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.

Personal wireless service means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended, which defines the term as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

Public right-of-way means the surface of, and the space within, through, on, across, above, or below, any public street, public sidewalk, public boulevard, public parkway, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City of Montclair.

Small Cell Facility shall mean a type of wireless infrastructure comprised of small antennas that are placed on existing or new vertical infrastructure (such as utility poles) within the public right-of-way, and which are accompanied by equipment installed on the pole, on or below the ground.

More specifically, a Small Cell Facility shall meet all of the following requirements:

- a. The facility
 - i. Is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d); or
 - ii. Is mounted on a structure no more than 10 percent taller than other adjacent structures; or
 - iii. Does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- b. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three (3) cubic feet in volume;
- c. All other wireless equipment associated with the facility, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than twenty-eight (28) cubic feet in volume;
- d. The facilities does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b);
- e. The facility is not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- f. The facility does not require antenna structure registration under 47 C.F.R. Part 17.

Small Cell Permit means the non-exclusive grant of authority issued by the City of Montclair to install a Small Cell Facility in a portion of the Public right-of-way in accordance with Chapter 9.105.

Support Structure means any structure capable of supporting a Base Station.

Tower means any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for personal wireless services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include Utility Poles.

Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs, street light poles, and Decorative poles.

Wireless Facility means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including, without limitation, all of the following:

- a. Equipment associated with wireless communications;
- b. Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration;
- c. Associated towers, support structures, or base stations; and
- d. The term does not include Coaxial or fiber-optic cable that is not immediately adjacent to or directly associated with a particular Antenna and equipment.

SECTION III. The Montclair Municipal Code for the City of Montclair ("Code") shall be amended to add a new Chapter 9.105 entitled "SMALL CELL FACILITIES IN THE PUBLIC RIGHT-OF-WAY" as follows:

9.105.10 Purpose and intent.

The purpose of this chapter is to establish procedures and standards, consistent with all applicable federal, state, and local laws for small cell facilities and eligible facilities requests in the City's public right-of-way and to ensure that facilities are carefully

located, designed, constructed, modified, maintained, unified, and removed when no longer in use in conformance with all applicable health, safety, and welfare regulations.

A. Exemptions.

1. In the event that there is an emergency, disaster, special event, or other extenuating circumstances, the Community Development Director may exempt from the requirements of this chapter the installation of a "cell on wheels," "cell on truck," or a similar structure for a temporary period in connection with the emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.

2. The placement or modification of Wireless Facilities by the City or by any other agency of the state solely for public safety purposes.

9.105.20 General Requirements

The following requirements shall apply to Wireless Facilities, as defined in City Code Section 9.02.020, which are proposed for installation within the public right-of-way:

- A. The permitting procedures and authorizations set forth in this chapter shall apply only to Small Cell Facilities and Eligible Facilities Requests in the public right-of-way. Except for small cell facilities, facilities qualifying as eligible facilities requests, exempt facilities, or any other type of facility expressly allowed in the public right-of-way by state or federal law, no other Wireless Facilities shall be permitted pursuant to this Chapter.
- B. No Person shall occupy or use the Public right-of-way without first obtaining City approval and appropriate permit(s), per the provisions of Chapter 9.105 of the Montclair Municipal Code, and any requisite consent of the City. Before placing Wireless Facilities in the public right-of-way (other than exempt facilities), an Applicant must apply for and receive all necessary approvals and permits, including, but not limited to, a general encroachment permit for work within public right-of-way as provided under Chapter 9 of the Montclair Municipal Code.
- C. In occupying or using the public right-of-way, no Person shall compromise the public health, safety, and welfare.
- D. Nothing in this chapter precludes the City from applying its generally applicable health, safety, and welfare regulations when granting a permit for a Wireless Facility in the City's public right-of-way.
- E. Any wireless facility already existing in the public right-of-way as of the date of this Chapter's adoption shall remain subject to the provisions of the City Code in effect prior to this Chapter, unless and until a renewal of such then-existing permit is granted, at which time the provisions of this Chapter shall apply in full force going forward as to such facility. The review of any request for a renewal of a permit for such pre-existing wireless facilities shall be conducted pursuant to this Chapter, rather than the portion(s) of the Municipal Code under which it was previously reviewed.

9.105.30 Administration

Community Development Director ("the Director") or his or her designee is responsible for administering this Chapter. As part of the administration of this Chapter, the Director may:

- 1. Interpret the provisions of this Chapter and the Design Standards;
- 2. Develop forms and procedures for submission of Applications consistent with this Chapter;
- 3. Determine the amount of and collect, as a condition of the completeness of any Application, any fee established by this Chapter;
- 4. Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;

5. Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
6. Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the Application; and
7. Take such other steps as may be required to timely act upon Applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

9.105.40 Application and Approval Process

- A. Pre-Application Conference. A pre-submittal conference with City staff and potential Applicants is strongly encouraged to discuss potential project applications on a conceptual level.
- B. Application Required. Prior to installation, modification, relocation or removal of a Wireless Facility in the public right-of-way, the Applicant shall apply to the City in-person and receive approval from the City.
- C. Required Application Materials. An applicant shall submit an application on the form approved by the Community Development and Public Works Departments, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the City to make required findings and ensure that the proposed facility will comply with applicable federal and state law and the City Code, and will not endanger the public health safety, or welfare. Application forms shall be obtained from the Department of Community Development.
- D. Application Processing Fee. An application processing fee shall be collected at the time an Application is submitted for review and approval. The fee amount shall be in conformance with the limits prescribed by law and/or the established fee resolution of the City of Montclair.
- E. Incompleteness. Applications will be processed to determine completeness and consistency with all applicable federal, state, and local laws. If an application is incomplete, the Community Development Department and/or Public Works Department shall notify the applicant in writing of the specific deficiencies with the submitted application and/or materials.
- F. Application Approval. The final review and determination regarding a complete application shall be made by the Director.
 1. Except for Eligible Facilities Requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, they find the following:
 - a. Safety and compatibility of the design of the proposed facilities, relevant structures, landscaping, luminaries and other site features which may include functional aspects of the site development, including compliance with any applicable design standards, as adopted by resolution of the City Council; and
 - b. Compliance with all applicable requirements and standards of state and federal law; and
 2. For eligible facilities requests, the Director shall approve an application if, on the basis of the application and other materials or evidence provided in review thereof, it finds the following:
 - a. That the application qualifies as an eligible facilities request; and
 - b. That the proposed facility will comply with all generally-applicable laws.

3. Application approval shall not be construed to waive standard permit fees for building or public works permits authorizing construction activities conducted within the City.
4. Decisions shall be in writing and include the reasons for the decision.
5. The Director is authorized, in his or her discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any application under this Chapter. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an application, including, but not limited to, application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards.

9.105.50 Design Standards

City Council shall adopt by resolution detailed Design Standards to provide guidance and a degree of consistency in the design of small cell facilities proposed for placement within the public right-of-way. The guidelines are not intended to dictate a one-size fits all approach for use at all times and/or for all potential locations, but to illustrate how small cell facilities can be aesthetically integrated into the existing public streetscape and neighborhood character with the least amount of adverse visual impact as possible.

In the event that strict compliance with any provision contained in the approved Design Standards, as applied to a specific proposed Small Cell Facility, would effectively prohibit the provision of personal wireless services, the Director may grant exceptions from strict compliance. All waivers approved pursuant to this subsection shall be (1) granted only on a case-by-case basis; and (2) narrowly-tailored to minimize deviation from the requirements of the adopted Design Standards.

9.105.60 Standard Conditions of Approval

All applications approved to install a small cell facility within the public right-of-way shall be subject to the following standard conditions of approval, in addition to any supplemental conditions imposed by the City and other sections of this Ordinance, unless modified by the Director:

- A. Installation Time Frame. Approved small cell facilities within the public right-of-way shall be fully complete per approved plans within 180 days from the date of approval.
 1. An applicant may submit a written request for a time extension to the Community Development Director for an extended time frame not to exceed 180 days from the last day of the previous approval time frame.
 2. Requests for a time extension shall be submitted in writing to the Community Development Director at least 10 calendar days prior to the expiration date of the initial small cell facility approval date. Requests for the time frame extension shall provide a reason for the delay.
 3. Failure to complete the project within above specified periods shall deem the project approval null and void and require the removal of all work performed in the right-of-way or require the submittal of a new project application and payment of associated fees, including the cost for new building and/or public works permits.
- B. Permit Duration. A small cell permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a small cell permit must either (1) remove the small cell facility within thirty (30) days following the permit's expiration (provided that removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or (2) at least ninety (90) days prior to expiration, submit an application to renew the small cell permit, which application must, among all other requirements, demonstrate that the impact of the small cell facility cannot be reduced. The small cell facility must remain in place until it is acted upon by the City and all appeals from the City's decision exhausted.

- C. Other Permits Required. Upon the approval a Small Cell Facility Application, and prior to the commencement of work in the public right-of-way, the applicant shall obtain all required public works and/or building permits to construct and/or install the approved Small Cell Facility and pay all applicable fees.
- D. Insurance. Permittees obtaining a permit to install a small cell facility in the public right-of-way, its successors and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit commercial general liability insurance policy for bodily injury and property damage and general aggregate amount as determined by the City Risk Manager. All coverages are to be arranged on an occurrence basis and include coverage for those hazards normally identified during construction. All insurance coverage required herein shall be written in a form and by a company or companies reasonably approved by the Risk Manager of the City of Montclair and authorized to do business in the State of California. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City of Montclair as an additional insured as its interest may appear under this Permit.
- E. Transferability. The approval to operate a small cell facility within the public right-of-way may be transferred to a new person upon written notice to the City if no change to the physical configuration of the approved facility is proposed. A new person seeking to make changes to the physical components of an existing approved facility and/or desiring to upgrade to new technology may be subject to the requirement of submitting a new application and review process to utilize the subject location.
- F. Emergency Contact and Access. The Permittee shall provide a contact person and phone number where a live individual can be contacted in the event of an emergency. In the event of an emergency, the City or its designee may enter onto the facility to inspect upon a 24 hours' notice to the Permittee. The permittee shall cooperate with all inspections and may be present for any inspection of its facility by the City. The City reserves the right to enter or direct its designee to enter the facility and support, repair, disable, or remove any elements of the facility in emergencies or when the facility threatens imminent harm to persons or property.
- G. Maintenance. The Permittee shall continually maintain the appearance of all components related to the small cell facility or wireless support structure. A description of the anticipated maintenance and monitoring program for the antennae and back-up equipment, including frequency of maintenance services, back-up service plans for disruption of service due to repair, maintenance or monitoring activities shall be provided to the City and kept on file for reference at any time.
- H. Generally Applicable Health and Safety Regulations. All Small Cell Facilities shall be designed, constructed, operated, and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including, without limitation, all applicable regulations for human exposure to RF emissions.
- I. No Liability. The City shall not be liable to the Permittee by reason of inconvenience, annoyance, or injury to the Small Cell Facilities and related ground or pole-mounted equipment or activities conducted by the Permittee therefrom, arising from the necessity of repairing any portion of the public right-of-way, or from the making of any necessary alteration or improvements, in or to, any portion of the Public right-of-way, or in, or to, City's fixtures, appurtenances, or equipment.
- J. Signal Interference Prohibited. In the event that a Permittee's Small Cell Facility interferes with the public safety radio system, or the City's or State of California's traffic signal system, then the Permittee shall, at its cost, immediately cooperate with the City to either rule out Permittee as the interference source or eliminate the interference. Cooperation with the City may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.
- K. Annual Fee for Use of City Owned Structures. For small cell facilities installed on City owned structures, or the installation of a freestanding support pole within the public right-of-way, the Permittee shall be required to pay the annual fee established in the master license agreement with the City.

- L. Annual Certification. On or before January 15th of every year after commencing operations, the Permittee shall submit written confirmation to the City that each facility is operating as approved.
- M. Indemnification. The Permittee and, if applicable, the owner of the property on which the Small Cell Facilities or Wireless Support Structures in the Public right-of-way are installed shall indemnify, protect, defend, and hold the City and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Permittee who owns or operates Small Cell Facilities and wireless service in the Public right-of-way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Permittee, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the Public right-of-way.
- N. Surety Bond. All owners must procure and provide to the City a bond, or provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this Chapter. The bond must be maintained for as long as the owner has Small Cell Facilities and/or Wireless Support Structures located in the Public right-of-way. The bond or equivalent financial method must specifically cover the cost of removal of unused or Abandoned Small Cell Facilities, Wireless Support Structures, and all other related facilities and equipment, based on the greater of two contractors' quotes for removal that are provided by the Permittee, and damage to City property caused by a Permittee or its agent of each Small Cell Facility and/or Wireless Support Structure in case the City has to remove or pay for its removal. Two acceptable alternatives to a bond include a funds set-aside and a letter of credit.
- O. Priority of City Right-of-Way Improvements. All small cell facilities located and/or utilizing existing structures, within the public right-of-way are subject to modification and/or relocation as the result of right-of-way improvements due to:
1. New development on private property requiring or conditioned to underground existing overhead wires and utility poles; or
 2. Implementation of a City Council approved capital improvement project (CIP) necessitating removal or placement of existing overhead wires, utility poles, and/or other structures underground.
- P. Relocation of A Small Cell Facility. The relocation of any small cell facility shall require the submittal and approval of a new project application and payment of associated processing and permit fees.
- Q. City Removal for Safety and Imminent Danger Reasons. In the event that the installation or operation of a small cell facility is determined by the City Engineer or Building Official to pose an imminent danger to the public, health, safety, or welfare, then the City may:
1. Order the Permittee to take immediate action, at the Permittee's sole cost and expense, to remedy the dangerous condition(s), including the requirement to disconnect, remove, or relocate all, or a component of, the applicable Small Cell Facility; or
 2. Upon the failure of the Permittee to promptly remedy the dangerous condition, the City, at the Permittee's sole cost and expense, may take appropriate action to address the dangerous condition(s), including the disconnection, removal, or relocation of any component of the Small Cell.
- R. Removal/Abandonment of Facilities. Any small cell facility that ceases to be operational for a period of more than 180 days, without due cause as approved by the City, shall be considered to be abandoned. Abandoned facilities shall, at the Permittee's sole cost and expense, be removed in its entirety from the public right-of-way, with 60 days or notice from the City.

- S. Restoration. The Permittee shall repair, at its sole cost and expense, any damage to the public right-of-way, any facilities or landscaping located within the Public right-of-way, and/or the property of any third party resulting from the Permittee's installation, removal, or relocation activities (or any other of the Permittee's activities hereunder) within ten (10) calendar days following the date of such activities. Restoration of the public right-of-way and such property must be to substantially the same condition as it was immediately before the date that the Permittee was granted a Small Cell Permit for the applicable location, or did the work at such location (even if the Permittee did not first obtain a Small Cell Permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration, and replacement shall be subject to the approval of the Community Development Director and/or Public Works Director.
- T. Changes in State or Federal Standards and Regulations. If state or federal standards and regulations are amended, the owners of the Small Cell Facilities governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring Small Cell Facilities into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- U. Tree and Vegetation Trimming. The Permittee and its contractors and agents shall obtain prior written permission from the City Public Works Director before removing or trimming any trees or other vegetation in the public right-of-way to install or maintain clearances for a small cell facility. When trimming trees or vegetation on private property, the Permittee and its contractors and agents shall notify the City and obtain prior written permission from the affected property owner(s). Improper pruning or "topping" of trees is prohibited and may result in fines and/or require replacement of the tree, at the Permittee's sole cost and expense, to the satisfaction of the Community Development Director. The City shall not be liable for any damages, injuries, or claims arising from the Permittee's actions under this section.
- V. Noise. The Permittee is required to incorporate ambient noise suppression measures and/or to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.
- W. Code Compliance. The Permittee shall at all times maintain compliance with all applicable federal, state, and local laws, regulations and other rules, including, without limitation, those applying to the use of public right-of-way.
- X. No waiver of standing. The city's grant of a permit for a small cell facility request does not waive, and shall not be construed to waive, any standing by the city to challenge any FCC orders or rules related to small cell facilities, or any modification to those FCC orders or rules.

9.105.70 Standard Conditions of Approval – Eligible Facilities Requests

In addition to the conditions imposed by the Director, all permits for an eligible facility requests granted pursuant to this Article shall be subject to the following additional conditions, unless modified by the Director:

1. Permit subject to conditions of underlying permit. Any permit granted in response to an application qualifying as an eligible facilities request shall be subject to the terms and conditions of the underlying permit.
2. No permit term extension. The city's grant or grant by operation of law of an eligible facilities request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject tower or base station. Notwithstanding any permit duration established in another permit condition, the city's grant or grant by operation of law of a eligible facilities request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject tower or base station.

3. No waiver of standing. The city's grant or grant by operation of law of an eligible facilities request does not waive, and shall not be construed to waive, any standing by the city to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

9.105.80 Effect of Partial Invalidity

The provisions of this Chapter are hereby declared to be severable, and if any section, subsection, or clause of this Chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Chapter that can be given effect.

9.105.90 Penalty

Failure to comply with any provision of this Chapter, the penalty shall be a civil forfeiture, payable to the City, in the amount established by Resolution of the City Council per violation, per day, for each day the violation(s) continue(s).

- A. In addition to the civil forfeiture in division (A), the City may also pursue the remedies of revocation of the permit or specific performance of the violated provision.
- B. The City Manager may excuse violations of this Chapter for reasons of *Force Majeure*. For purposes of this section, "*Force Majeure*" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of California or any of their departments, agencies, or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the Permittee, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

SECTION IV. City Code Chapter 11.73 shall be amended as follows:

Amend the first sentence of Section 11.73.020 to read: This Chapter applies to all wireless telecommunications facilities existing and proposed to be located within the corporate boundary of the City of Montclair, except wireless telecommunications facilities in the public right-of-way which are subject to Chapter 9.105.

SECTION V. City Code Chapter 11.73.020 shall be amended as follows:

Strike the following sentence: "These regulations shall also apply to wireless telecommunications facilities within public rights-of-way except as prohibited by State Law."

SECTION VI. City Code Chapter 11.73.030- Definitions shall be amended to delete the definition of "Micro-cell network" in its entirety.

SECTION VII. City Code Chapter 11.73.090(D) shall be amended as follows:

Strike the entire bottom row of the Table.

SECTION VIII. Environmental Review.

This Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The Ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Moreover, when and if an application for installation is submitted, the City will at that time conduct preliminary review of the application in accordance with CEQA. Alternatively, even if the Ordinance is a "project" within the meaning of State CEQA Guidelines section 15378, the Ordinance is exempt from CEQA on multiple grounds.

First, the Ordinance is exempt from CEQA because the City Council's adoption of the Ordinance is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3)). That is, approval of the Ordinance will not result in the actual installation

of any facilities in the City. In order to install a facility in accordance with this Ordinance, the applicant would have to submit an application for installation of the small cell facility. At that time, the City will have specific and definite information regarding the facility to review in accordance with CEQA. And, in fact, the City will conduct preliminary review under CEQA at that time. Moreover, in the event that the Ordinance is interpreted so as to permit installation of wireless facilities on a particular site, the installation would be exempt from CEQA review in accordance with either State CEQA Guidelines section 15302 (replacement or reconstruction), State CEQA Guidelines section 15303 (new construction or conversion of small structures), and/or State CEQA Guidelines section 15304 (minor alterations to land). The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino within five working days of the passage and adoption of the Ordinance.

SECTION IX. Effective Date.

This Ordinance shall become effective thirty days after its passage.

SECTION X. Posting.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2019.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 19-980 of said City, which was introduced and adopted at a regular meeting of the City Council held on the XX day of XX, 2019, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk

RESOLUTION NO. 19-3228

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR, CALIFORNIA, ESTABLISHING
AESTHETIC/DESIGN STANDARDS RELATING TO
SMALL CELL FACILITIES LOCATED IN THE PUBLIC
RIGHT OF WAY

WHEREAS, the City of Montclair, California ("City") is a municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, pursuant to the police powers delegated to it by the California Constitution, the City is authorized to enact laws which promote the public health, safety, and general welfare of its citizens; and

WHEREAS, on October 15, 2018, the Federal Register published Federal Communications Commission (FCC) order on the *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (hereafter referred to as FCC 18-133); and

WHEREAS, FCC 18-133 placed new limitations on local authority to regulate small cells including new shot clocks for acting on applications and limits on fees which went into effect on January 14, 2019, and limits on aesthetic standards which go into effect on April 15, 2019; and

WHEREAS, the City Council deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of small cells and other structures within the City's public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority; and

WHEREAS, on (Date), 2019, the City Council adopted Ordinance No. 19-980 to add Chapter 9.105 to Chapter 9 of the Municipal Code to address small cell wireless telecommunication facilities being installed within the public right-of-way and requiring that such facilities comply with design standards and applicable fees as adopted by separate resolutions of the City Council; and

WHEREAS, City staff prepared aesthetic/design standards as contained in The City of Montclair: Design Standards for Small Cell Facilities in the Public Right-of-Way document (Exhibit 1, attached hereto and incorporated herein).

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby adopt The City of Montclair: Design Standards for Small Cell Facilities in the Public Right-of-Way, attached to and incorporated in this Resolution as Exhibit 1.

Effective Date. This Resolution shall be in full force and effect immediately upon adoption.

APPROVED AND ADOPTED this XX day of XX, 2019.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 19-3228 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2019, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk



RESOLUTION NO. 18-3228
EXHIBIT 1

Design Standards for Small Cell Facilities in the Public Right-of-Way

Effective: _____ 2019

SECTION A: PURPOSE

The purpose of these Standards is to establish general aesthetic requirements and standards that all small cell facilities installed within the public right-of-way (ROW) must meet. The intent of these requirements and standards complements the criteria established in Chapter 9.105 of the Montclair Municipal Code. Small cell facilities not installed within the public ROW are not bound to the requirements of these Standards, but are subject to the provisions of the City's Wireless Telecommunications Ordinance in Chapter 11.73 of the Montclair Municipal Code. These Standards are subject to amendment from time to time.

SECTION B: EXISTING STRUCTURES IN THE PUBLIC RIGHT-OF-WAY

The City does not own or maintain most existing street lighting, utility, or traffic signal poles in the public right-of-way. The majority of current utility poles in the public ROW are the property of Southern California Edison (SCE), and/or other utility companies. It shall be the responsibility of applicants to obtain final agreements from the owners of existing street infrastructure (e.g., lighting, utility, or traffic signal poles, etc.) to utilize these structures for attaching and operating a small cell facility.

Evidence of an approved agreement to utilize a utility provider's structure is a submittal requirement of an application for a small cell facility within the City's public ROW. Deviations from these Standards shall be subject to review and approval on a case-by-case basis by the City prior to installation.

SECTION C: CITY REVIEW

The City's Public Works Department is the responsible entity for permitting any infrastructure, object, or construction in the public ROW. Given the concern for aesthetics, all applications for small cell facilities within the public ROW shall be subject to joint review and approval by the Montclair Public Works and Community Development Departments. City review shall be for compliance with these Standards and applicable requirements in the City Code.

1. City-Owned Poles/Structures: In addition to an encroachment permit, small cell facilities and equipment placed on new or existing City-owned structures/facilities require a master license agreement with the City as well as the issuance of a Construction Permit and Building Permit (if applicable) issued by the City.
2. Privately-Owned Poles/Structures: In addition to an encroachment permit, small cell facilities and equipment attached to privately-owned utility poles shall require written proof of approval from the owner(s) of the affected pole/structure and the approval of a Construction Permit issued by the Public Works Department.
3. Prior to submitting an application, the applicant shall be responsible to determine that existing poles or other structures are of appropriate size and have sufficient strength to accommodate the additional equipment loads. Permit applications must include a structural analysis prepared by a licensed structural engineer.

4. Applications shall be limited to a maximum of 10 poles per request. To be included in a single application, the small cell for each pole must be substantially similar in terms of the antenna and equipment design and placement, and must utilize the same type of pole (e.g. all existing utility poles).

SECTION D: LOCATION CRITERIA

The City recognizes that the siting of small cell facilities is largely dictated by wireless providers in response to customer need, terrain, and radio frequency modeling results. However, the City seeks to minimize the amount of new infrastructure placed in the public ROW. To that end, the City recommends the following criteria for placement of the small cell facilities within the public ROW:

1. Small cell facilities shall utilize existing utility structures for wireless networks to the maximum extent possible. Existing utility poles are already standing, are of adequate height in most cases for antennas, and have electrical power nearby.
2. In locations where streetlight or utility poles are not present, or are not capable of accepting new equipment, a provider may request to:
 - a. Remove and replace an existing combination streetlight/antenna pole with a new one; or
 - b. Construct a new freestanding pole, pursuant to criteria for freestanding poles in Section H.2.
3. The City encourages network providers to co-locate new equipment onto existing poles and infrastructure in the public ROW wherever possible. The City recognizes each carrier owns rights to a spectrum of operating frequency and requires some separation with competing antennas to avoid signal interference.
4. Pole mounted or freestanding small cell facilities and/or equipment shall be located such that they do not: impede, obstruct, or hinder the usual pedestrian or vehicular travel; affect public safety; obstruct the legal access to or use of the public ROW; violate applicable law; violate or conflict with public ROW design standards, specifications, or design district requirements; violate Americans with Disabilities Act (ADA) requirements; or in any way create a risk to public health, safety, or welfare.
5. In any Specific Plan Area (i.e., North Montclair Downtown Specific Plan), or a neighborhood with unique streetlight assemblies, new small cell facilities may only be allowed if the applicant can demonstrate that the small cell installation can effectively match the existing streetlight aesthetics in terms of the design, colors, height and size. Unique assemblies may include, without limitation, mast arms, decorative pole bases, architectural luminaires, mounting heights, and pole colors. An example of a unique streetlight can be found in **Figure 1-1.**

SECTION E: PROHIBITED LOCATIONS, SUPPORT POLES, AND ATTACHMENTS

1. No small cell facility or equipment of any kind shall be located on traffic signal/control poles.
2. Strand mounted small cell attachments shall be prohibited.
3. New freestanding, single purpose, wood poles are prohibited.

SECTION F: CONSIDERATION OF ALTERNATE LOCATIONS

The Applicant must identify alternative locations in the vicinity of the proposed small cell facility and explain why the proposed location was selected. The City may propose an alternate location to the one proposed in the application if that the alternate location:

1. Is substantially similar in physical characteristics to the proposed structure;
2. The visual impacts that may be suffered by the public are no greater than the impact if installed on the proposed structure; and
3. The alternate infrastructure can accommodate the proposed small cell facility without creating any risk to the public health or safety.

SECTION G: DESIGN CRITERIA

The general intent for these Standards is to preserve the character of the City's neighborhoods and corridors by encouraging installations that blend into the existing streetscape as much as possible. To achieve this goal the City has developed the following general criteria for applicant to work towards achieving with their respective requests for approval.

Applicant are strongly encouraged to consult with City staff early on in the process prior to formally submitting an application.

Standard Design Elements

Applicants shall take into consideration the following criteria:

1. Match the aesthetics and alignment of the existing street and utility structures in the ROW of the neighborhoods adjacent to proposed small cell facility location(s).
2. Standardize pole design elements, such as color and location, to meet intent and character of existing infrastructure in the public ROW.
3. Utility poles and/or streetlight locations proposed for a small cell facility must already have electrical power in place. No new power poles (in the ROW or off-site) and/or overhead wires from another source shall be permitted.
4. Limit pole heights to match existing street lighting and other poles in the public ROW in the vicinity of the proposed small cell facility.
5. Avoid placing new poles adjacent to parks and historical places.

6. Utilize pole and equipment designs that enclose as much equipment as possible to minimize visual impact.
7. Co-locate equipment onto existing infrastructure wherever feasible.
8. All equipment located within the public ROW shall be located such that it meets ADA requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel.
9. Whenever possible all small cell carrier equipment shall be enclosed and screened from view by means of a shroud to the greatest extent possible. A maximum of two shrouds may be used at each location.
10. All elements of a small cell facility (including, without limitation, antennas, cabinets, shrouds, and electric meters) shall be as small as possible so as to be effectively concealed or otherwise minimize their visibility to the greatest extent possible.
11. No logos, decals, or advertising of any type may be affixed to any element of the small cell facility or equipment or pole, except as required by federal or state law. However, the City shall require a decal or placard measuring no more than 4" x 6" in size, which lists the facility owner's name and emergency contact phone number. The placard shall be placed in an inconspicuous manner area on an element of the equipment or on the pole immediately below the antenna.
12. New small cell facilities and wireless support structures shall not be directly illuminated (internally or externally), except as incidentally illuminated by an unrelated light source.
13. The use of any cooling system associated with the small cell facility shall comply with all applicable local regulations and federal and state laws.

SECTION H: TYPES OF INSTALLATIONS

Small cell facilities within City may be allowed as attachments to wooden utility poles (with or without streetlights), attachments to metal, concrete, or wood streetlights, or upon new freestanding poles located within the public ROW. An overview of each type is provide below. All installations on utility poles shall fully comply with the California Public Utilities Commission (CPUC) general orders (GOs), including, but not limited to, GO 95. None of the following design standards are meant to conflict with or cause a violation of GO 95, including, but not limited to, its standards for a safe installation on a utility pole. Accordingly, size limits can be adjusted at the Director's discretion to ensure compliance with CPUC rules on safety.

1. Attachment to Existing Utility Poles or Streetlights

Installing small cell facilities and/or equipment on existing utility poles is highly encouraged. The applicant shall ensure that the supporting poles are appropriately

sized and have sufficient strength to accommodate the additional small cell equipment loads. All installations shall meet or exceed all applicable structural standards, clearance standards, and provisions of the latest National Electrical Safety Code or City construction standards. In case of conflict, the most stringent requirements shall prevail.

- a. Where possible, all small cell facilities and equipment shall be enclosed and screened from view by means of a shroud to the greatest extent possible. A maximum of two shrouds shall be installed at each location.
- b. Placement of antennas above an existing utility pole or streetlight may be permitted provided that the antenna:
 - i. Is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d); or
 - ii. Is mounted on a structure no more than ten (10) percent taller than other adjacent structures; or
 - iii. Does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is more restrictive.
- c. The maximum dimensions for antennas shall not be more than three (3) cubic feet in volume, including any shroud or enclosure for the antenna.
- d. No protrusions from the outer circumference of the existing structure or pole shall be more than two (2) feet in any direction. The City, at its option, may waive the two-foot limit for cause.
- e. No loose, exposed, or dangling wiring or cables shall be allowed. All external cables or wiring shall be sheathed (or enclosed) within a durable tubing material (e.g., conduit) of the smallest diameter necessary to protect and provide the shortest and direct route between elements of the facility.
- f. All elements of a small cell facility and equipment shall be painted or finished to match the color of the existing support pole/structure to which they are attached to the greatest extent possible. Approved paint colors may be obtained from the Community Development Director.
- g. The City strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. Due to ever-increasing crowding of the public ROW and potential line-of-sight safety concerns, ground-mounted meter pedestals are strictly prohibited, unless required by state or federal laws.
- h. No ground-mounted enclosures or meter pedestals, including backup power supply, shall be allowed, unless required by state or federal laws.
- i. For utility poles with a streetlight, no small cell facilities shall compromise the

performance of the streetlights.

2. New Freestanding Poles

In locations where existing utility poles within the public ROW are not available, a freestanding pole to support a small cell facility may be considered. As with small cell facilities mounted to the existing utility poles or streetlight structures, the design of a new freestanding pole shall meet the following criteria:

- a. New freestanding poles shall align with and/or match the predominant pattern, distribution, and heights of existing streetlights and/or utility poles in the adjacent ROW as determined by the Public Works Director.
- b. New freestanding poles adjacent to residences or commercial establishments (e.g., a shop or restaurant) should not create a visually negative impact. For example, a new freestanding pole with small cell facilities and equipment shall not be located directly in front of storefront windows, primary walkways, or primary entrances or exits. In residential areas, new freestanding poles should be located between properties.
- c. All freestanding poles with small cell facilities and equipment shall be privately owned and properly maintained by the owner at all times.
- d. Freestanding poles shall match the aesthetics of existing streetlights (and any component thereon, including, but not limited to, mast arm, luminaire, and decorative hardware) installed in proximity to the pole to maintain a cohesive appearance.
 - i. New freestanding poles shall be metal, concrete, or decorative, as determined by the Public Works and Community Development Directors. No new wood poles for the sole purpose of mounting a small cell facility shall be allowed.
 - ii. In any Specific Plan Area (e.g., North Montclair Downtown Specific Plan) or a neighborhood with unique streetlight assemblies, new small cell facilities may be allowed if the applicant can demonstrate that the small cell facility and equipment can effectively match the existing streetlight aesthetics, subject to the satisfaction of the Community Development Director.
- e. No element of a small cell facility not covered by a shroud or concealment element shall be placed, mounted, or strapped to the outside of a new freestanding pole. All antennas shall be enclosed within a decorative shroud that meets the requirements of these Standards, and all wires, cables, and conduits associated with the facility shall be routed directly through the new pole with all points of connection for power or data being placed underground.
- f. All hardware connections shall be hidden from view.
- g. No ground-mounted enclosures or meter pedestals, including backup power supply, are permitted.

FIGURE 1-1
IMAGES OF POLES WITHIN
THE RIGHT-OF-WAY



Non-Ornamental Cement Street Light Pole



Ornamental Street Light Pole



Non-Ornamental
Transmission Wood Light
Pole



Non-Ornamental Distribution
Wood Light Pole

RESOLUTION NO. 19-3229

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTCLAIR, CALIFORNIA, ESTABLISHING
PERMIT FEES, APPEAL FEES, AND OTHER FEES
RELATING TO SMALL CELL FACILITIES WITHIN THE
PUBLIC RIGHT OF WAY**

WHEREAS, the City of Montclair has the statutory authority to impose fees, charges, and rates under its regulatory and police power as authorized by the State of California; and

WHEREAS, there is a need for the City of Montclair to recoup reasonable costs related to the provisions of specified services; and

WHEREAS, user fees are imposed to assign the cost of providing services to the specific individual or group of individuals receiving the benefits of said services, rather than funding said services from General Fund revenues; and

WHEREAS, on October 15, 2018, the Federal Register published Federal Communications Commission (FCC) order on the *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment* (hereafter referred to as FCC 18-133); and

WHEREAS, FCC 18-133 placed new limitations on local authority to regulate small cells including new shot clocks for acting on applications and limits on fees which went into effect on January 14, 2019, and limits on aesthetic standards which go into effect on April 15, 2019; and

WHEREAS, on (Date) 2019, the City Council adopted Ordinance No. 19-980 to add Chapter 9.105 to Chapter 9 of the Municipal Code to address small cell wireless telecommunication facilities being installed within the public right-of-way and requiring that such facilities comply with design guidelines and applicable fees as adopted by separate resolutions of the City Council; and

WHEREAS, it is the City Council's direction that all user fees, to the extent possible, are to be reviewed and amended annually, consistent with the User Fee Cost Recovery Policy.

WHEREAS, until such time as the next annual fee review is completed, the City Council has determined that the "safe harbor" fee amounts set forth in FCC 18-133 shall apply to small cell facilities.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find and determine as follows:

SECTION 1. Master User Fee Additions. The Master User Fee Schedule is hereby amended to include the following fees related to small cell facilities in the public right of way. From the date hereof until the City establishes fees consistent with the User Fee Cost Recovery Policy, the following fees shall apply:

**New Fees Related to Small Cell Facilities Within the Public
Right-of-Way**

Non-Recurring Fees

- | | |
|--|------------|
| • Collocation to existing pole/structure(s)
Limit one collocation per application
submittal. | \$500.00 |
| • For each application above five, \$100
additional per application. | \$100.00 |
| • New Construction (new pole or structure
installation), per application. | \$1,000.00 |

<u>Recurring Fees</u> (for use of space on City- Owned Poles), per year	\$270.00 per pole
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<u>Appeal Fee</u>	\$200.00
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SECTION 2. Effective Date. This Resolution shall be in full force and effect immediately upon adoption.

APPROVED AND ADOPTED this XX day of XX, 2019.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 19-3229 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2019, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk



AGENDA REPORT

DATE: FEBRUARY 19 , 2019

FILE I.D.: CVC060

SECTION: ADMIN. REPORTS

DEPT.: PUBLIC WORKS

ITEM NO.: 10

PREPARER: M. MCGEHEE

SUBJECT: CONSIDER RECEIVING AND FILING A STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES RELATED TO WOOD FLOOR RESTORATION IN THE COMMUNITY CENTER

CONSIDER DECLARING A TERMINATION TO THE EMERGENCY ACTION AUTHORIZED UNDER RESOLUTION NO. 19-3226

CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION FOR THE EMERGENCY REPAIRS

REASON FOR CONSIDERATION: By City Council action on January 22, 2019, Resolution No. 19-3226 was adopted declaring a need for emergency contracting procedures for wood floor restoration in the Community Center Gymnasium. Under Public Contract Code Section 22050, the governing body shall review the emergency action at its next regularly scheduled meeting and every regularly scheduled meeting thereafter until the action is terminated, to determine, by a four-fifths majority vote, that there is a need to continue the action.

BACKGROUND: On January 22, 2019, a contract was awarded to Maier International, Inc., by the City Manager in accordance with the authority delegated to him by Resolution 19-3226 for floor restoration work in the Community Center Gymnasium.

The drying of the floor concluded on February 5, 2019 and the gymnasium reopened for activities on Wednesday, February 6, 2019.

FISCAL IMPACT: Concurrent with the approval of Resolution No. 19-3226, the City Council appropriated \$20,000 for the repair work. The total costs incurred in restoring the damaged gymnasium wood floor were \$19,686.56.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Receive and file a status report on emergency contracting procedures related to wood floor restoration in the Community Center.
2. Declare a termination to the emergency action authorized under Resolution No. 19-3226.
3. Approve the filing of a Notice of Completion for the emergency repairs with the Office of the San Bernardino County Recorder.

RECORDING REQUESTED BY:

City of Montclair

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

CITY, STATE & ZIP
CODE: **Montclair, CA 91763**

Government Code 6103

(Space above this line for Recorder's Use Only)

NOTICE OF COMPLETION

NOTICE is hereby given that: The undersigned is the owner of an interest of estate in the hereinafter described property, the nature of which said interest or estate is:

fee

The full name and address of the undersigned is
Noel Castillo
Public Works Director
City Engineer
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as:

Community Center Gymnasium Floor Emergency Restoration and Repair

for the undersigned City of Montclair,
a Municipal Corporation, on the 5th day of February, 2019

The City accepted the job on the 5th day of February, 2019

The Contractor on said job was
Maier International, Inc.
1979 Potrero Grande
Monterey Park, CA 91755

The improvement consisted of:

Wood Floor Restoration and Repair

The property upon which said work of improvement was completed is described as:

Montclair Civic Center at 5111 Benito Street of Montclair, CA

APN 1010-301-20-0000

VERIFICATION

I, the undersigned, say that I am agent for the owner of the aforesaid interest or estate in the property described in the above notice. I have read the foregoing notice and know and understand the contents thereof, and the facts stated herein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 19, 2019 at 5111 Benito Street, Montclair, California

Noel Castillo
Public Works Director
City Engineer



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: PDT715

SECTION: ADMIN. REPORTS

DEPT.: POLICE

ITEM NO.: 11

PREPARER: M. BUTLER

SUBJECT: CONSIDER AUTHORIZING A \$6,350 APPROPRIATION FROM PROPOSITION 30/AB 109 FUND TO PURCHASE FOOD, HOTEL ACCOMMODATIONS, AND PROMOTIONAL ITEMS FOR THE EVERY 15 MINUTES PROGRAM TO BE HELD AT MONTCLAIR HIGH SCHOOL

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing a \$6,350 appropriation from Proposition 30/AB 109 Fund to purchase food, hotel accommodations, and promotional items for the upcoming Every 15 Minutes Program to be held at Montclair High School.

BACKGROUND: The Police Department, in conjunction with Montclair High School, will present the Every 15 Minutes Program on March 6-7, 2019, to deter high school juniors and seniors from driving under the influence of drugs and/or alcohol. This powerful two-day interactive program enlists participation of police and fire personnel, school staff, hospital and paramedic services, coroner's office, community officials, local businesses, students, and parents. The program culminates with a student assembly that includes mock funeral services and various speakers, including one whose life has been dramatically affected by impaired driving.

School officials have secured grant funding to pay for much of the program costs; however, they have sought assistance from the Police Department to supplement grant funding to cover all costs associated with the program. As such, the Police Department has been asked to provide funding for hotel accommodations, food, T-shirts, hoodies, and duffle bags for program participants and commemorative key chains for the entire junior and senior student body for a total cost of \$6,350.

FISCAL IMPACT: The purchase of food, hotel accommodations, and promotional items for the Every 15 Minutes Program would result in an expenditure of \$6,350 from Proposition 30/AB 109 Fund (1141).

RECOMMENDATION: Staff recommends the City Council authorize a \$6,350 appropriation from Proposition 30/AB 109 Fund to purchase food, hotel accommodations, and promotional items for the Every 15 Minutes Program to be held at Montclair High School.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: PUB400

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 1

PREPARER: S. STANTON

SUBJECT: CONSIDER AWARD OF CONTRACT FOR THE REEDER CITRUS RANCH ROOF REPLACEMENT AND ELECTRICAL IMPROVEMENT PROJECT TO OCC BUILDERS, INC., IN THE AMOUNT OF \$110,000

CONSIDER APPROVAL OF AGREEMENT NO. 19-12 WITH OCC BUILDERS, INC., FOR CONSTRUCTION OF THE REEDER CITRUS RANCH ROOF REPLACEMENT AND ELECTRICAL IMPROVEMENT PROJECT

CONSIDER AUTHORIZATION OF A \$15,000 CONSTRUCTION CONTINGENCY

REASON FOR CONSIDERATION: Awards of contracts and agreements with the City require City Council approval.

BACKGROUND: On January 17, 2019, the City Clerk received and opened two bid proposals for the Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project. The project will include replacement of the existing roof, eaves, and fascia boards, and installation of a new electrical meter pedestal, electrical service panel, and an event box to provide electrical services for outside entertainment. A summary of the bid results are below.

Summary of Bid Results for the
**REEDER CITRUS RANCH ROOF REPLACEMENT
AND ELECTRICAL IMPROVEMENT PROJECT**

<i>Contractor</i>	<i>Bid Amount</i>
OCC Builders, Inc.	\$110,000
<i>Engineer's Estimate</i>	<i>\$130,000</i>
Tobin Construction, Inc.	\$157,500

Following the bid opening, the two bid proposals were reviewed for completeness and accuracy. The bid proposal from the apparent low bidder, OCC Builders, Inc., provided all required documents and was deemed the lowest responsible, responsive bidder for the project. OCC Builders, Inc., has never performed work for the City, however, reference checks with surrounding cities indicate that OCC Builders, Inc., is known to have the personnel, equipment and job experience necessary to complete this contract in accordance with the project specifications.

The anticipated duration of this project is 30 working days, with the work expected to begin in late March and completed no later than May 1, 2019.

FISCAL IMPACT: The Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project is completely funded with Community Development Block Grant (CDBG) funds.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Consider awarding a contract for the Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project to OCC Builders, Inc., in the amount of \$110,000.
2. Consider approval of Agreement No. 19-12 with OCC Builders, Inc., for construction of the Reeder Citrus Ranch Roof Replacement and Electrical Improvement Project.
3. Consider authorization of a \$15,000 construction contingency for the Project.

KNOW ALL MEN BY THESE PRESENTS: That the following Agreement is made and entered into as of the date executed by the City Clerk and the Mayor, by and between **OCC BUILDERS, INC., a CORPORATION**, hereinafter referred to as "CONTRACTOR" and the CITY OF MONTCLAIR, hereinafter referred to as "CITY."

A. Recitals.

- (i) Pursuant to Notice Inviting Sealed Bids or Proposals, bids were received, publicly opened, and declared on the date specified in said notice.
- (ii) CITY did accept the bid of CONTRACTOR.
- (iii) CITY has authorized the City Clerk and Mayor to enter into a written contract with CONTRACTOR for furnishing labor, equipment, and material for the construction of:
- (iv)

**REEDER CITRUS RANCH ROOF REPLACEMENT AND ELECTRICAL
IMPROVEMENT PROJECT**

"PROJECT" hereinafter.

B. Resolution.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.
2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.
3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher,

AGREEMENT

for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

4. GOVERNING LAW: The City and Contractor understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Montclair.

5. INSURANCE: The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required hereunder in a company or companies acceptable to CITY nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been obtained. The CONTRACTOR shall take out and maintain at all times during the life of this contract the following policies of insurance:

a. Compensation Insurance: Before beginning work, the CONTRACTOR shall furnish to the Engineer a policy of insurance or proper endorsement as proof that he has taken out full compensation insurance for all persons whom he may employ directly or through subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In accordance with the provisions of §3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. CONTRACTOR, prior to commencing work, shall sign and file with CITY a certification as follows:

"I am aware of the provisions of §3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract."

b. For all operations of the CONTRACTOR or any subcontractor in performing the work provided for herein, insurance with the following minimum limits and coverage:

- (1) Public Liability - Bodily Injury (not auto) \$1,000,000 each person; \$2,000,000 each accident.
- (2) Public Liability - Property Damage (not auto) \$500,000 each accident; \$1,000,000 aggregate.
- (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.

AGREEMENT

- (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
 - (6) Automobile - Property Damage \$500,000 each accident.
 - c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
 - (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
 - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
 - d. Each such policy of insurance provided for in paragraph b. shall:
 - (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
 - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
 - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
 - (4) Contain a clause substantially in the following words:

"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
 - (5) Otherwise be in form satisfactory to CITY.
 - e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.
- 6. **CONTRACTOR'S LIABILITY:** The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the

AGREEMENT

materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

The CONTRACTOR will indemnify CITY against and will hold and save CITY harmless from any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision, or other organization arising out of or in connection with the work, operation, or activities of the CONTRACTOR, his agents, employees, subcontractors, or invitees provided for herein, whether or not there is concurrent passive or active negligence on the part of CITY, but excluding such actions, claims, damages to persons or property, penalties, obligations, or liabilities arising from the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY, and in connection therewith:

- a. The CONTRACTOR will defend any action or actions filed in connection with any of said claims, damages, penalties, obligations, or liabilities and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.
- b. The CONTRACTOR will promptly pay any judgment or award rendered against the CONTRACTOR or CITY covering such claims, damages, penalties, obligations, and liabilities arising out of or in connection with such work, operations, or activities of the CONTRACTOR hereunder or reasonable settlement in lieu of judgment or award, and the CONTRACTOR agrees to save and hold the CITY harmless therefrom.
- c. In the event CITY is made a party to any action or proceeding filed or prosecuted against the CONTRACTOR for damages or other claims arising out of or in connection with the project, operation, or activities of the CONTRACTOR hereunder, the CONTRACTOR agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with reasonable attorneys' fees.

Money due to the CONTRACTOR under and by virtue of the contract, as shall be considered necessary by CITY, may be retained by CITY until disposition has been made of such actions or claims for damage as aforesaid.

AGREEMENT

7. **NONDISCRIMINATION:** No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

8. **INELIGIBLE SUBCONTRACTORS:** The CONTRACTOR shall be prohibited from performing work on this project with a subcontractor who is ineligible to perform on the project pursuant to § 1777.1 and § 1777.7 of the Labor Code.

9. **CONTRACT PRICE AND PAYMENT:** CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **January 16, 2019**.

10. **ATTORNEYS' FEES:** In the event that any action or proceeding is brought by either party to enforce any term or provision of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs incurred with respect thereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

CONTRACTOR

CITY

OCC Builders, Inc.

CITY OF MONTCLAIR, CALIFORNIA

17050 Bushard Street, Suite 325
Fountain Valley, CA 92708

By: _____

Name:

Javier "John" Dutrey
Mayor

Title

ATTEST:

By: _____

Name:

Andrea M. Phillips
City Clerk

Title

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: STA670

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 2

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF A RECTANGULAR RAPID FLASHING BEACON IMPROVEMENT PLAN – BENSON AVENUE AND J STREET

CONSIDER APPROVAL OF AGREEMENT NO. 19-13 WITH THE CITY OF ONTARIO FOR THE INSTALLATION OF A RECTANGULAR RAPID FLASHING BEACON AT BENSON AVENUE AND J STREET

CONSIDER AUTHORIZING A \$10,000 APPROPRIATION FROM THE LOCAL DEVELOPMENT IMPACT FEE FUND FOR COSTS RELATED TO AGREEMENT NO. 19-13

REASON FOR CONSIDERATION: Staff received a request to install a flashing beacon on Benson Avenue at J Street. The Cities of Montclair and Ontario would like to enter into a contract to enhance the intersection of Benson Avenue at J Street with the installation of a Pedestrian Crossing Warning System in the form of a rectangular rapid flashing beacon (RRFB). Agreements with the City require City Council approval.

A copy of proposed Agreement No. 19-13 is attached for City Council review and consideration.

The City Council is also asked to consider approving the engineering plan and authorizing an appropriation of \$10,000 from the Local Development Impact Fee fund for costs related to the installation of said beacon.

BACKGROUND: Staff received a request to install a flashing beacon on Benson Avenue at J Street. The eastern boundary of the City runs north-south through the center of Benson Avenue, with Montclair on the west side and Ontario on the east side. Installation of a RRFB at an intersection along Benson would require cooperation between the cities of Montclair and Ontario. The proposed project lies within the jurisdictional boundaries of both cities, and will be of mutual benefit to both cities.

Staff conducted an engineering traffic study to determine if the flashing beacon is warranted at this location. At the end of the study, it was concluded that a RRFB should be installed.

Staff recommends that the City Council authorize the installation of the RRFB through approval of Agreement No. 19-13. The proposed agreement establishes the responsibilities of both parties. Some of the terms include:

- City of Ontario agrees to:
 - Take the lead in the preparation of the plans and installation of the RRFB
 - Provide project management and inspection for the project

- City of Montclair agrees to:
 - Pay to the City of Ontario Montclair's share of the Project costs (50%).
 - Estimated costs for City of Montclair are not expected to exceed \$10,000.
 - Upon completion of the project, Montclair will maintain the portions of the Project within the jurisdictional boundaries of Montclair.

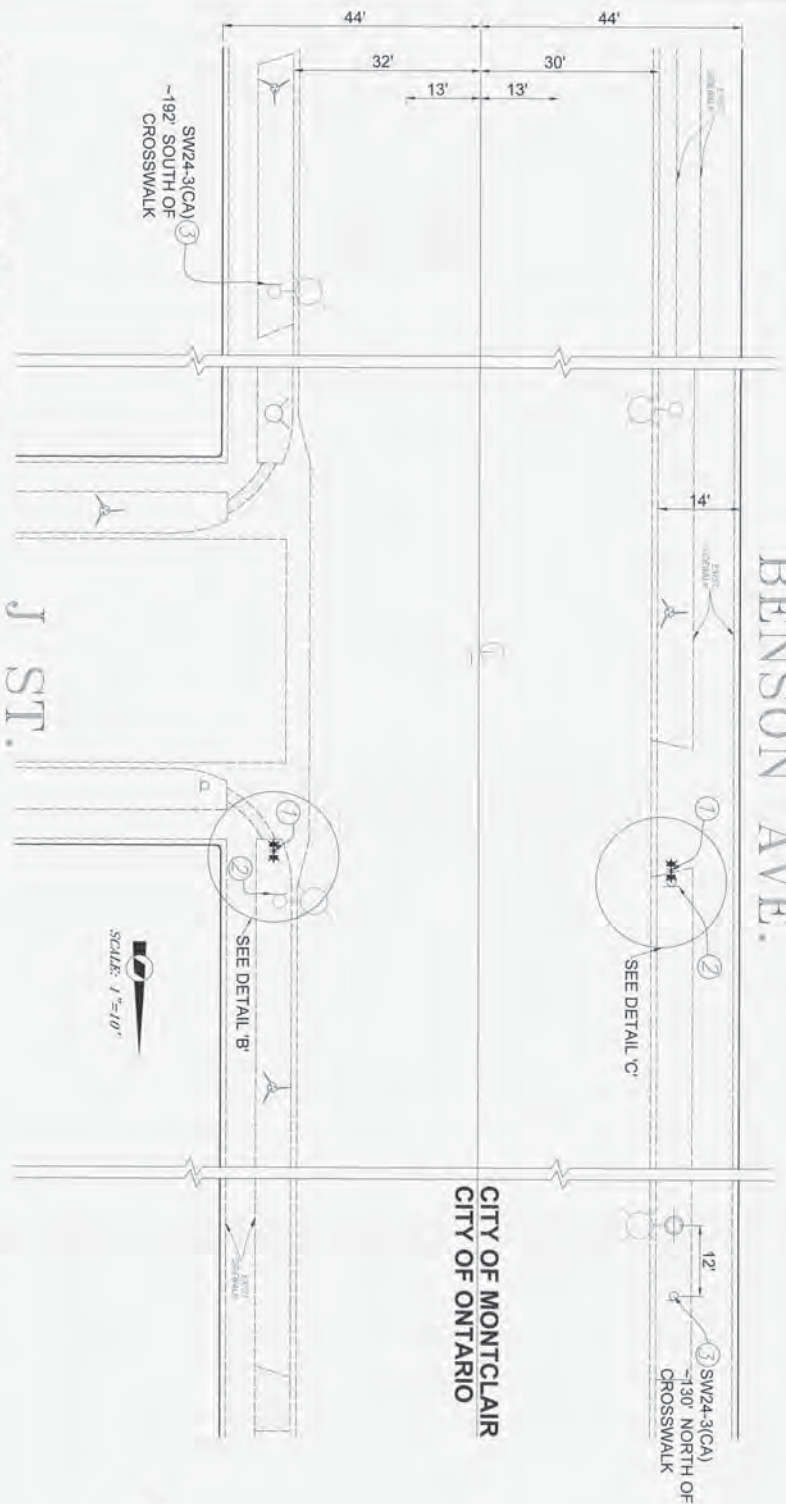
An Engineering plan has also been developed and is attached for City Council review.

FISCAL IMPACT: Estimated costs for the installation of the Pedestrian Crossing Warning System at Benson Avenue and J Street are not expected to exceed \$10,000. Agreement No. 19-13 will be funded from the Local Development Impact Fee Fund.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Consider approval of a Rectangular Rapid Flashing Beacon Improvement Plan – Benson Avenue and J Street.
2. Approve Agreement No. 19-13 with the City of Ontario for the installation of Rectangular Rapid Flashing Beacon at Benson Avenue and J Street.
3. Authorize a \$10,000 appropriation from the Local Development Impact Fee Fund for costs related to Agreement No. 19-13.

BENSON AVE.



CITY OF MONTCLAIR
CITY OF ONTARIO

CONSTRUCTION NOTES

- 1- INSTALL RECTANGULAR RAPID FLASHING BEACON FORSTAYAN CROSSING SYSTEM ON 2" SQUARE POST AS PER CITY SIB.
- 2- REMOVE AND SALVAGE EXISTING SIGNS
- 3- FURNISH AND INSTALL SIGN AND POST AS NEEDED



See each below.
Call before you dig.

CITY OF MONTCLAIR

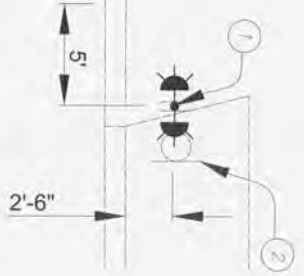
DATE	1/22/19
BY	1/22/19
FOR	1/22/19
PROJECT	1/22/19
REVISION	1/22/19
APPROVED BY	1/22/19
DESIGNED BY	1/22/19
CHECKED BY	1/22/19
DATE	1/22/19

LEGEND

- EXISTING RIGHT OF WAY OR PROPERTY LINES
- EXISTING CURB & GUTTER
- CITY BOUNDARY
- RAMP COULE
- EXISTING GRASS
- EXISTING SIDEWALK
- EXISTING FIRE HYDRANT
- EXISTING POWER POLE
- EXISTING TRAFFIC SIGN
- EXISTING TREE
- EXISTING STREET LIGHT
- EXISTING STREET LIGHT WOODEN POLE
- RECTANGULAR RAPID FLASHING BEACON

12'

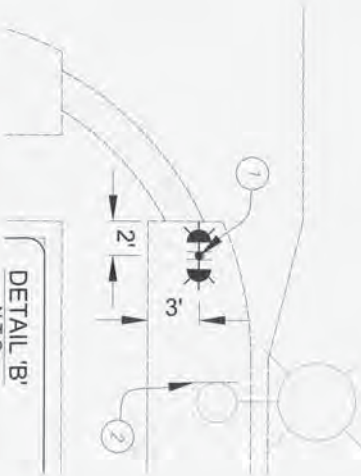
DETAIL 'C'
N.T.S.



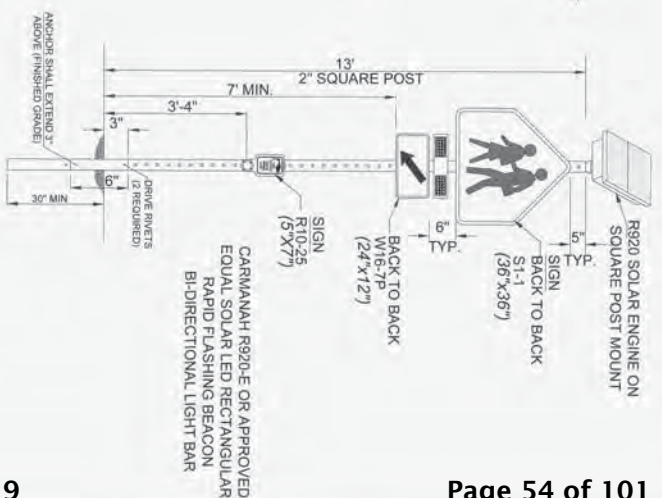
RECTANGULAR RAPID FLASHING BEACON IMPROVEMENT PLAN

BENSON AVENUE AND J STREET

DETAIL 'B'
N.T.S.



DETAIL 'A'
N.T.S.



**COOPERATIVE AGREEMENT
BETWEEN THE CITY OF MONTCLAIR AND THE CITY OF ONTARIO
FOR THE INSTALLATION OF A PEDESTRIAN CROSSING WARNING SYSTEM
ON BENSON AVENUE AT J STREET**

This Agreement is made and entered into on this ____ day of February, 2019, by and between the City of MONTCLAIR, a municipal corporation ("MONTCLAIR"), and the City of ONTARIO, a municipal corporation ("ONTARIO"), individually referred to as "Party," or collectively referred to as the "Parties."

RECITALS

WHEREAS, MONTCLAIR and ONTARIO desire to cooperate and jointly participate in the installation of a pedestrian crossing warning system (hereinafter referred to as the "PROJECT") located across Benson Avenue at its intersection with J Street;

WHEREAS, the jurisdictional boundary of MONTCLAIR and ONTARIO in this area runs along the centerline of Benson Avenue in a north/south orientation;

WHEREAS, the PROJECT lies within the jurisdictional boundaries of both Parties, and will be of mutual benefit to both Parties;

WHEREAS, ONTARIO desires to design and administer the installation of the PROJECT;

WHEREAS, MONTCLAIR desires to reimburse ONTARIO for MONTCLAIR'S proportionate share of the design and installation costs of the PROJECT;

WHEREAS, the Parties desire to set forth their respective responsibilities and obligations in regards to each Party's participation and funding of the PROJECT.

NOW, THEREFORE, IT IS AGREED by and between the Parties as follows:

1.0 CITY OF ONTARIO AGREES TO:

- 1.1 Prepare the plans and specifications for the installation of the PROJECT, and obtain written approval of said plans and specifications from MONTCLAIR prior to proceeding with the installation of the PROJECT.
- 1.2 Require any Contractor retained for the installation of the PROJECT to obtain a MONTCLAIR business license, to defend, indemnify, and hold MONTCLAIR harmless from any liabilities arising out of Contractor's performance of its obligations, and to maintain liability insurance as broad as the following coverage's and in the following minimum amounts with MONTCLAIR named as additional insured:

- a. *General Liability.* Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), with limits no less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage, and \$2,000,000 aggregate total bodily injury, personal injury and property damage. Commercial General Liability Insurance and endorsements shall be kept in force at all times during the performance by Contractor..
 - b. *Automobile Liability.* Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
 - c. *Worker's Compensation and Employer's Liability.* Worker's Compensation insurance as required by the State of California and in the amount required by law. Employer's Liability Insurance in the amount of \$1,000,000 each employee for bodily injury or disease.
 - d. *Primary Insurance.* This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.
 - e. *Waiver of Subrogation.* A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.
- 1.3 Provide project management and administration services necessary for the design and installation of the PROJECT.
 - 1.4 Issue all payments necessary for the complete installation of the PROJECT as per the approved plans and specifications. Any change orders for the portion of the PROJECT within MONTCLAIR's right-of-way shall be approved in writing by MONTCLAIR prior to the performance of the work.
 - 1.5 Provide inspection of all items of work performed and maintain adequate documentation concerning all services, expenses and time spent by ONTARIO for project management and administration for review by MONTCLAIR.
 - 1.6 Request a final inspection from MONTCLAIR for the portion of the PROJECT within MONTCLAIR's right-of-way, and complete any and all corrective action prior to preparation of a final invoice.
 - 1.7 Submit to MONTCLAIR one invoice for MONTCLAIR'S proportionate share at the completion of the PROJECT with a final statement itemizing

all actual expenses incurred by ONTARIO for the installation of the PROJECT including project management and administration.

- 1.8 Maintain all facilities installed by the PROJECT which are located within the jurisdictional boundaries of ONTARIO.

2.0 CITY OF MONTCLAIR AGREES TO:

- 2.1 Issue a no-fee encroachment permit to ONTARIO for work done within MONTCLAIR.
- 2.2 Pay to ONTARIO its share of the PROJECT costs as per Section 3.1 of this Agreement. MONTCLAIR shall pay ONTARIO the full amount of the final billing as described in Section 1.7 of this Agreement within thirty (30) days following receipt of said final billing. Provided, however, MONTCLAIR's share of the PROJECT costs shall not exceed the sum of \$10,000.
- 2.3 Upon completion of the PROJECT, MONTCLAIR will maintain those portions of the PROJECT within the jurisdictional boundaries of MONTCLAIR.

3.0 IT IS MUTUALLY AGREED:

- 3.1 The jurisdictional boundary is such that both ONTARIO and MONTCLAIR will each be responsible for half (50/50 split) of all the costs of the PROJECT as identified in Sections 1.0 and 2.0 of this Agreement.
- 3.2 ONTARIO shall indemnify and hold MONTCLAIR, its elected officials, officers, employees, agents, and volunteers free and harmless from and against any and all claims, demands, causes of action, liabilities, losses, obligations, judgments, or damages, including but not limited to property damage, bodily injury or death, or any other element of damage of any kind or nature, arising out of or incident to any act or omission by ONTARIO, its elected officials, officers, employees, agents, volunteers, or subcontractors, under or in connection with any work, authority or jurisdiction delegated to ONTARIO under this Agreement. Indemnification by ONTARIO includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of MONTCLAIR, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. ONTARIO'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by MONTCLAIR, its elected officials, officers, employees, agents, or volunteers.
- 3.3 MONTCLAIR shall indemnify and hold ONTARIO, its elected officials, officers, employees, agents, and volunteers free and harmless from and against any and all claims, demands, causes of action, liabilities, losses,

obligations, judgments, or damages, including but not limited to property damage, bodily injury or death, or any other element of damage of any kind or nature, arising out of or incident to any negligent act or omission by MONTCLAIR, its elected officials, officers, employees, agents, volunteers, or subcontractors, under or in connection with any work, authority or jurisdiction delegated to MONTCLAIR under this Agreement. Indemnification by MONTCLAIR includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of ONTARIO, its elected officials, officers, employees, agents, and/or volunteers for all legal expenses and costs incurred by each of them. MONTCLAIR'S obligation to indemnify shall not be restricted to insurance proceeds, if any, received by ONTARIO, its elected officials, officers, employees, agents, or volunteers.

- 3.4 In the event ONTARIO and/or MONTCLAIR is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, ONTARIO and/or MONTCLAIR shall indemnify the other to the extent of its comparative fault.
- 3.5 This Agreement may be canceled upon thirty (30) days written notice by either Party; however, costs incurred up to the effective date of cancellation shall be shared in the manner provided heretofore.
- 3.6 This Agreement shall inure to the benefit of and be binding upon the successors and assigns of both Parties.
- 3.7 Notification under this Agreement, except for written notices required or authorized herein, may be made by telephone or such other means as mutually agreed to by the Parties. Any written notice required or authorized under this Agreement shall be delivered in person or sent by registered or certified mail, postage prepaid, as specified below:

To Montclair:

City of Montclair
Public Works Department
P.O. Box 460
Montclair, CA 91785
Attn: Noel Castillo, P.E.
Public Works Director/ City Engineer

To Ontario:

City of Ontario
303 E. B Street
Ontario, CA 91764
Attn: Khoi Do, City Engineer

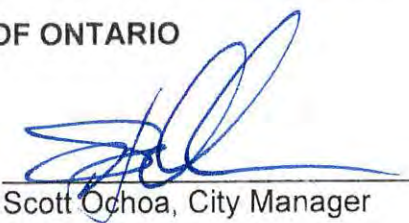

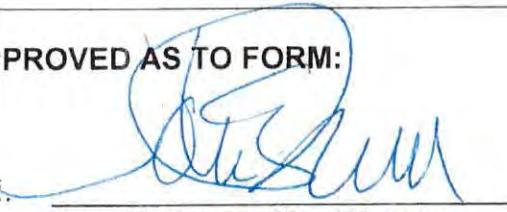
Either party may, by notice to the other party, change the designation or address of the person specified as the one to receive notice pursuant to this Agreement.

- 3.8 This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any lawsuit brought in connection with this Agreement shall be brought in the appropriate court in the County of San Bernardino, California.
- 3.9 If any legal action or other proceeding is brought in connection with this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other related costs, in addition to any other relief to which the party is entitled.
- 3.10 Time is of the essence in this Agreement and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.
- 3.11 If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 3.12 This Agreement contains the entire Agreement between the Parties and supersedes any prior oral or written statements or agreements between the Parties.
- 3.13 No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit either Party to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the Party making the waiver.
- 3.14 The signatories hereto represent that they are authorized to execute this Agreement on behalf of the Party for whom they sign.
- 3.15 The Parties agree to review and abide by the provisions of this Agreement. Should the Parties believe that an amendment, modification, or supplement may be necessary to this Agreement, the Parties agree to confer and cooperate in good faith to make the necessary amendment,

modification, or supplement. No amendment, modification, or supplement to this Agreement shall be binding unless executed in writing and signed by the Parties. Any valid amendment, modification, or supplement to this Agreement shall have no effect on any other provision of this Agreement, including all indemnity requirements.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officials or employees thereunto duly authorized.

CITY OF ONTARIO By:  Scott Ochoa, City Manager	CITY OF MONTCLAIR By: _____ Javier "John" Dutrey, Mayor
ATTEST:  Sheila Mautz, City Clerk	ATTEST: _____ Andrea Phillips, City Clerk
APPROVED AS TO FORM: By:  John E. Brown, City Attorney	APPROVED AS TO FORM: By: _____ Diane E. Roberts, City Attorney



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: STA670

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 3

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-14 WITH RICHMOND AMERICAN HOMES OF MARYLAND, INC., A GRANT DEED FOR LAND IMPROVED AS PUBLIC RIGHT-OF-WAY (ASSESSOR'S PARCEL NOS. 1009-153-58, -59, AND -60)

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-14 with Richmond American Homes of Maryland, Inc., a Grant Deed for land improved as public right-of-way, in order to authorize the transfer of privately-owned property in the public right-of-way to the City. The property owner and the City of Montclair will need to execute a Grant Deed for Assessor's Parcel Numbers 1009-153-58, -59, and -60. Agreements with the City require City Council approval.

BACKGROUND: During a maintenance process, it was discovered that privately owned parcels should have been deeded to the City as part of older developments. The existing public improvements are technically still located on private property. The public improvements are in place and have always been maintained by the City. Richmond American Homes, the current owner of parcels 1009-153-58, -59, and -60, was contacted and agrees the parcels should be deeded to the City.

FISCAL IMPACT: There is no fiscal impact related to the City Council's approval of Agreement No. 19-14. There will be no physical changes related to the property, which is already maintained by the City.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-14 with Richmond American Homes of Maryland, Inc., a Grant Deed for land improved as public right-of-way (Parcels Nos. 1009-153-58, -59, and -60).

**RECORDING REQUESTED BY
AND
WHEN RECORDED MAIL TO:**
The City of Montclair

APN: 1009-153-58, 1009-153-59,
1009-153-60

I-10 Corridor Contract 1 Project
FREE RECORDING:

This instrument is for the benefit of the City
of Montclair and is entitled to be recorded
without fee or tax. (Govt. Code 6103 and Rev.
& Tax Code 11922)

Space above this line for Recorder's Use

Agreement No. 19-14

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

RICHMOND AMERICAN HOMES OF MARYLAND, INC., A MARYLAND CORPORATION, SUCCESSOR BY
MERGER TO RICHMOND AMERICAN HOMES OF CALIFORNIA, INC., A COLORADO CORPORATION hereby
grants to the CITY OF MONTCLAIR all that real property in the City of Montclair, County of San
Bernardino, State of California, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF HEREOF.

RICHMOND AMERICAN HOMES OF MARYLAND, INC., A MARYLAND CORPORATION, SUCCESSOR BY
MERGER TO RICHMOND AMERICAN HOMES OF CALIFORNIA, INC., A COLORADO CORPORATION

By: 

Name: Sondra Harris

Its: VP

Date: 1/29/19

By: 

Name: Larry C. Hsia

Its: VP

Date: 1/29/19

EXHIBIT "A"

Lots A, B, and C of Tract No. 16381, In the City of Montclair, County of San Bernardino, State of California, as Shown on a Map recorded in Book 296, Pages 26 through 30, inclusive, of Maps, in the Office of the County Recorder of Said County.

Subject to non-delinquent real property taxes and assessments and all matters of record.

Assessor's Parcel Numbers 1009-153-58, 1009-153-59, and 1009-153-60.

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the GRANT DEED conveyed by the within instrument to the City of Montclair is hereby accepted by the undersigned officer/agent.

THE CITY OF MONTCLAIR

By: _____

Name: _____

Title: _____

Date: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the **document** to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

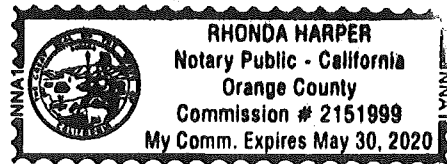
State of California)
County of Orange)

On January 30, 2019, before me, Rhonda Harper, Notary Public, personally appeared Sondra Harris and Larry C. Hsia, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same in ~~his~~/her/their authorized capacity(ies), and that by ~~his~~/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


(Signature)



(Affix Seal)

ACKNOWLEDGEMENT

notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

ACKNOWLEDGEMENT

notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: LEG150/PER600

SECTION: AGREEMENTS

DEPT.: ADMIN. SVCS.

ITEM NO.: 4

PREPARER: J. HAMILTON

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-15 WITH THE ZAPPILA LAW FIRM TO PROVIDE LEGAL AND CONSULTING SERVICES RELATED TO LITIGATION AND INDUSTRIAL DISABILITY RETIREMENT MATTERS

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 19-15 with the Zappia Law Firm to provide legal and consulting services related to litigation and industrial disability retirement matters. A copy of proposed Agreement No. 19-15 is attached for the City Council's review and consideration.

BACKGROUND: On December 17, 2018, the City Council approved and adopted Resolution No. 18-3220, which made certain findings to reinstate former employee Megan Stafford to her position as a police officer based upon a medical report by Dr. Sturtz indicating that she is no longer presently incapacitated for duty as a police officer within the meaning of the Public Employees' Retirement Law, that there were no specific job duties that Ms. Stafford is unable to perform despite having been determined to be disabled previously, and that she is capable of returning to her position as a police officer without limitations and in a full-time capacity. As a result, the City Council directed and delegated to the City Manager the authority to offer Ms. Stafford reinstatement to her previous position on or before January 7, 2019 and to notify CalPERS to discontinue her industrial disability allowance on January 7, 2019. Ms. Stafford was offered reinstatement to her previous position as a police officer, which she did not accept, and, on January 8, 2019, she appealed the City Council's determination to cancel her industrial disability retirement allowance as is authorized by California Government Code § 21156.

The City of Montclair has used legal services from various law firms for services related to litigation and employee relations; however, the City has never used a law firm that is able to provide legal services related to the re-evaluation process of industrial disability retirements. Director of Administrative Services & Human Resources Jon Hamilton discussed this appeal process with CalPERS and the State of California Office of Administrative Hearings to determine the appropriate appeal process. CalPERS indicated that the process is complicated and suggested Mr. Hamilton contact the County of Riverside's Human Resources Department, Public Safety Disability Division, for more information. CalPERS advised that the County of Riverside is likely the most experienced public agencies in handling appeals related to employee reinstatement.

Mr. Hamilton contacted the County of Riverside and discovered it uses Brett Ehman from the Zappia Law Firm to handle all such matters. The County of Riverside discussed multiple cases that Mr. Ehman has successfully handled at the State's Office of Administrative Hearings and in the Superior Court. Mr. Hamilton contacted Mr. Ehman to discuss retaining his services to represent the City of Montclair and he has agreed to do so.

A proposed agreement has been reached wherein the Zappia Law Firm would provide legal and consulting services to the City of Montclair effective upon approval of the proposed agreement by the City Council. The proposed hourly rates are competitive with the hourly rates of other law firms used by the City for legal and consulting services.

FISCAL IMPACT: The proposed fees are discussed in Agreement No. 19-15 and are summarized below:

	<i>Proposed Hourly Rates</i>
Attorney Services	\$275
Paralegal Services	\$120

The City will not be charged for staff work or overhead, but will promptly reimburse the Zappia Law Firm's actual out-of-pocket costs/expenses [such as filing fees; court reporter fees; copying; postage and messenger fees; and travel expenses]. The City will be directly responsible for any third-party fees (such as experts, arbitrators or mediators), but all such fees will be discussed with and approved by the City in advance.

Since these services are used on an as-needed basis, the exact fiscal impact is currently unknown. Funds for attorney services are currently included in the Fiscal Year 2018-19 Budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 19-15 with the Zappia Law Firm to provide legal and consulting services related to litigation and industrial disability retirement matters.

AGREEMENT NO. 19-15

LEGAL SERVICES AGREEMENT WITH THE ZAPPIA LAW FIRM FOR SPECIAL COUNSEL REPRESENTATION

THIS LEGAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 19th day of February, 2019 ("Effective Date"), by and between the CITY OF MONTCLAIR, a California municipal corporation ("City"), and THE ZAPPIA LAW FIRM, a California professional corporation ("Law Firm"), whose address is One Pacific Plaza, 7777 Center Avenue, Suite 625, Huntington Beach, CA, 92647 and is made with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California.
- B. City desires to engage Law Firm to provide legal services services to City ("Legal Service(s)") related to the analysis, advising, handling, litigation, prosecution and/or defense of Industrial Disability Retirements and related appeals of Industrial Disability Retirement determinations.
- C. Law Firm possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term shall be for an unlimited duration to commence upon the Effective Date of this Agreement, unless terminated earlier as set forth herein. Time is of the essence in the performance of Legal Services under this Agreement.

2. SCOPE OF SERVICES

Law Firm agrees to provide legal services to the City related to the analysis, advising, handling, litigation, prosecution and/or defense of Industrial Disability Retirements and related appeals of Industrial Disability Retirement determinations.

3. RESPONSIBILITIES OF LAW FIRM

Law Firm will provide the City legal services, counsel and representation as requested, and keep the City apprised of all developments in any matter. As always, Law Firm will exert its best efforts and provide the best advice it can about strategy in the City's best interests, but cannot guarantee results. All decisions will ultimately be the City's. Law Firm will send invoices in the normal course of business that specify costs, work

performed and attorney fees accrued. If the City has any questions about the invoice, please raise them promptly, and Law Firm will respond promptly. Otherwise, all accrued costs and fees are due within 30 days of receipt.

4. RESPONSIBILITIES OF THE CITY

The City will be truthful and forthright with Law Firm, will provide Law Firm with all relevant information germane to any matter, and will keep Law Firm apprised of all relevant developments. The City will abide by this Agreement and pay Law Firm's bills on time. The City will assist Law Firm in gathering any information and documents necessary to timely respond to discovery, due diligence requests, court proceedings, or any other requisite filings.

5. COMPENSATION

Law Firm's rates are \$275.00 per hour for legal services provided by Law Firm's attorneys and \$120.00 per hour for paralegal and/or law clerk services. The City will not be charged for staff work or overhead, but will promptly reimburse Law Firm's actual out of pocket costs/expenses [such as filing fees; court reporter fees; copying; postage and messenger fees; and travel expenses]. The City will also be directly responsible for any third-party fees (such as experts, arbitrators or mediators), but all such fees will be discussed with and approved by the City in advance. The City is notified that the City has the right to negotiate fees and fee arrangements.

6. INSURANCE

Law Firm has always carried and will continue to carry Professional Errors and Omissions Liability Insurance, as well as Workers Compensation Insurance. Evidence of such insurance will be made available to the City upon request.

7. TERMINATION

The City may discharge Law Firm at any time, for any reason or no reason. The City will still be responsible for fees and costs incurred until the date of termination of this Agreement. Law Firm may only withdraw with the City's consent or for Good Cause. Good Cause includes the City's breach of this Agreement, refusal to pay or cooperate, or any fact or circumstance that would render Law Firm's continuing representation unlawful or unethical. Upon termination, Law Firm will return all relevant files to the City or its new counsel (if the City directs so in writing), whether or not Law Firm has been paid in full.

8. STANDARD PROVISIONS

8.1 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

8.2 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all

preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

8.3 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

8.4 Amendments. This Agreement may be modified or amended only by a written document executed by both Law Firm and City and approved as to form by the City Attorney.

8.5 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

8.6 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of San Bernardino, State of California.

8.7 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF MONTCLAIR

Date

By: Javier John Dutrey
Its: Mayor

ATTEST

Andrea M. Phillips
City Clerk

ZAPPIA LAW FIRM

Date

By: Edward P. Zappia
Its: Principal



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: CVC500

SECTION: AGREEMENTS

DEPT.: PUBLIC WORKS

ITEM NO.: 5

PREPARER: N. CASTILLO

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 19-16 WITH SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT FOR THE INSTALLATION OF EIGHT ELECTRIC VEHICLE CHARGING STATIONS AT CITY FACILITIES

REASON FOR CONSIDERATION: The City would like to enter into a Partnership Agreement with South Coast Air Quality Management District (SCAQMD) for the installation of eight electric vehicle (EV) charging stations. Agreements with the City require City Council approval.

A copy of proposed Agreement No. 19-16 is attached for the City Council's review and consideration.

BACKGROUND: The SCAQDM Governing Board approved funding for the City of Montclair on October 5, 2018, for the installation of EV charging stations. The project includes installing EV charging stations at three City of Montclair facilities: the City Hall Employee Parking Lot, the Police Department Employee Parking Lot, and the City Yard.

FISCAL IMPACT: There would be no fiscal impact to the City's General Fund should the City Council approve Agreement No. 19-16 with SCAQMD.

At its December 18, 2017 regular meeting, the City Council adopted Resolution No. 17-3182 allocating the necessary funding match of \$50,000 from the City's Air Quality Improvement Trust Fund for the grant application. The grant application was approved, and the grant and matching funds were included in the FY 2018-19 budget.

RECOMMENDATION: Staff recommends the City Council approve Agreement 19-16 with SCAQMD for the installation of eight EV charging stations.



AB 2766/MSRC LOCAL GOVERNMENT PARTNERSHIP PROGRAM CONTRACT

1. PARTIES

The parties to this contract ("Contract") are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the City of Montclair (referred to here as "CONTRACTOR") whose address is 5111 Benito Street, Montclair, California 91763.

2. RECITALS

- A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California (State). SCAQMD is authorized under State Health & Safety Code Section 44225 (AB 2766) to levy a fee on motor vehicles for the purpose of reducing air pollution from such vehicles and to implement the California Clean Air Act.
- B. Under AB 2766, SCAQMD's Governing Board has authorized the imposition of the statutorily set motor vehicle fee. By taking such action, the State's Department of Motor Vehicles (DMV) is required to collect such fee and remit it periodically to SCAQMD.
- C. AB 2766 further mandates that thirty (30) percent of such vehicle registration fees be placed by SCAQMD into a separate account for the sole purpose of implementing and monitoring programs to reduce air pollution from motor vehicles.
- D. AB 2766 creates a regional Mobile Source Air Pollution Reduction Review Committee (MSRC) to develop a work program to fund projects from the separate account. Pursuant to approval of the work program by SCAQMD's Governing Board, SCAQMD authorized this Contract with CONTRACTOR for equipment or services described in Attachment 1 - Statement of Work, expressly incorporated herein by this reference and made a part hereof of this Contract.
- E. CONTRACTOR has met the requirements for receipt of AB 2766 Discretionary Funds as set forth in CONTRACTOR's Local Government Partnership Program Application/Proposal dated July 25, 2018.
- F. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
- G. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.

3. DMV FEES

CONTRACTOR acknowledges that SCAQMD cannot guarantee that the amount of fees to be collected under AB 2766 will be sufficient to fund this Contract. CONTRACTOR further acknowledges that payment under this Contract is contingent upon SCAQMD receiving sufficient funds from the DMV, and that SCAQMD assumes no responsibility for the collection and remittance of motor vehicle registration fees.

4. AUDIT AND RECORDS RETENTION

- A. CONTRACTOR shall, at least once every two years, or within two years of the termination of the Contract if the term is less than two years, be subject to an audit by SCAQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution from motor vehicles pursuant to the Clean Air Act of 1988.
- B. CONTRACTOR agrees to maintain records related to this Contract during the Contract term and continue to retain these records for a period of two years beyond the Contract term, except that in no

case shall CONTRACTOR be required to retain more than the most recent five years' records. SCAQMD shall coordinate such audit through CONTRACTOR'S audit staff.

- C. If an amount is found to be inappropriately expended, SCAQMD may withhold funding, or seek reimbursement, from CONTRACTOR in the amount equal to the amount that was inappropriately expended. Such withholding shall not be construed as SCAQMD's sole remedy and shall not relieve CONTRACTOR of its obligation to perform under the terms of this Contract.

5. TERM

The term of this Contract is for fifty three (53) months from the date of execution by both parties, unless terminated earlier as provided for in the TERMINATION clause of this Contract, the EARLY TERMINATION clause, or the term is extended by amendment of this Contract in writing. No work shall commence prior to the Contract start date, except at CONTRACTOR's cost and risk, and no charges are authorized until this Contract is fully executed, subject to the provisions stated in the PRE-CONTRACT COSTS clause of this Contract.

6. SUCCESSORS-IN-INTEREST

This Contract, and the obligations arising under the Contract, shall be binding on and inure to the benefit of CONTRACTOR and their executors, administrators, successors, and assigns.

7. REPORTING

CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.

8. TERMINATION

- A. In the event any party fails to comply with any term or condition of this Contract, or fails to provide services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a breach of this Contract. The non-breaching party shall notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this contract. Notification shall be provided in the manner set forth in the NOTICES clause of this Contract. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover damages.
- B. SCAQMD reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as and to the extent or directed otherwise by SCAQMD, discontinue any Work being performed under this Contract and cancel any of CONTRACTOR's orders for materials, facilities, and supplies in connection with such Work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any Work already in progress and to dispose of any property as requested by SCAQMD.
- C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under section B of the TERMINATION clause of this Contract. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to SCAQMD all copies of documents and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.

9. EARLY TERMINATION

This Contract may be terminated early due to the following circumstances: The infrastructure identified in Attachment 1, Statement of Work, becomes inoperable, and is either not technically able to be repaired, or is too costly to repair, and such failure is not caused by CONTRACTOR's negligence, misuse, or malfeasance.

10. STOP WORK

SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the Statement of Work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

11. INSURANCE

CONTRACTOR represents that it is permissibly self-insured and will maintain such self-insurance in accordance with applicable provisions of California law throughout the term of this Contract. CONTRACTOR shall provide evidence of sufficient coverage during the term of this Contract and any extensions thereof that meet or exceed the minimum requirements set forth by the SCAQMD below. The certificate of self-insurance shall be mailed to: SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765-4178, Attention: Cynthia Ravenstein, MSRC Contracts Administrator. **The SCAQMD Contract Number must be included on the face of the certificate.** If CONTRACTOR fails to maintain the required insurance coverage, SCAQMD reserves the right to terminate the Contract or purchase such additional insurance and bill CONTRACTOR or deduct the cost thereof from any payments owed to CONTRACTOR. Minimum insurance coverages are as follows:

- A. Worker's compensation insurance in accordance with either California or other state's applicable statutory requirements.
- B. General Liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in general aggregate.
- C. Automobile Liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage.

12. INDEMNIFICATION

CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract. This Indemnification Clause shall survive the expiration or termination (for any reason) of the Contract and shall remain in full force and effect.

13. DISCLAIMER OF WARRANTY

The purchase or lease of funded vehicles/equipment is the CONTRACTOR's decision. The SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or product. Without limiting the foregoing, the SCAQMD will not be financially responsible, or otherwise liable, for the installation or performance of the vehicle/equipment.

14. PAYMENT

- A. SCAQMD shall reimburse CONTRACTOR up to a total amount of Fifty Thousand Dollars (\$50,000) in accordance with Attachment 2 - Payment Schedule expressly incorporated herein by this reference and made a part hereof of the Contract.
- B. A withhold amount or percentage (if any) shall be identified in the Payment Schedule, and such amount shall be withheld from each invoice. Upon satisfactory completion of project and final acceptance of work and the final report, CONTRACTOR's invoice for the withheld amount shall be released. Proof of project completion shall include a Final Report detailing the project goals and accomplishments, data collected during project performance, if any, documentation of significant results, and emissions reduction input data needed for calculation of emissions reductions.
- C. Any funds not expended upon early Contract termination or Contract completion shall revert to the AB 2766 Discretionary Fund. Payment of charges shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by SCAQMD of an itemized invoice prepared and furnished by CONTRACTOR.
- D. An invoice submitted to SCAQMD for payment must be prepared in duplicate, on company letterhead, and list SCAQMD's contract number, period covered by invoice, and CONTRACTOR's social security number or Employer Identification Number and submitted to:

South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Cynthia Ravenstein, MSRC Contracts Administrator

1. Charges for equipment, material, and supply costs, travel expenses, subcontractors, and other charges, as applicable, must be itemized by CONTRACTOR. Reimbursement for equipment, material, supplies, subcontractors, and other charges, as applicable, shall be made at actual cost. Supporting documentation must be provided for all individual charges (with the exception of direct labor charges provided by CONTRACTOR).
2. SCAQMD shall pay CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment 2 - Payment Schedule of this Contract or pre-authorized by SCAQMD in writing.
3. CONTRACTOR's failure to provide receipts shall be grounds for SCAQMD's non-reimbursement of such charges. CONTRACTOR may reduce payments on invoices by those charges for which receipts were not provided.
4. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.

15. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR agrees to comply with all federal, state, and local laws, ordinances, codes and regulations and orders of public authorities in the performance of this Contract. CONTRACTOR must also ensure that the vehicles and/or equipment to be purchased, leased or installed in the performance of this Contract are in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will

maintain compliance for the full Contract term. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.

16. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs)

- A. The MSRC has adopted a policy that no MSERCs resulting from AB 2766 Discretionary Funds may be generated and/or sold.
- B. CONTRACTOR has the opportunity to generate MSERCs as a by-product of the project if a portion of the air quality benefits attributable to the project resulted from funding sources other than AB2766. These MSERCs, which are issued by SCAQMD, are based upon the quantified vehicle miles traveled (VMT) by project vehicles or other activity data as appropriate. Therefore, a portion of prospective MSERCs, generated as a result of AB 2766 Funds, must be retired. The portion of prospective credits funded by the AB 2766 program, and which are subject to retirement, shall be referred to as "AB 2766-MSERCs."
- C. The determination of AB 2766-MSERC's is to be prorated based upon the AB 2766 program's contribution to the cost associated with the air quality benefits. In the case where AB 2766 Discretionary Funds are used to pay for the full differential cost of a new alternative fuel vehicle or for the retrofitting or repowering of an existing vehicle, all MSERCs attributable to AB 2766 Discretionary Funds must be retired. The determination of AB 2766-MSERCs for infrastructure and other ancillary items is to be prorated based upon the AB 2766 program's contribution to the associated air quality benefits. Determination of the project's overall cost will be on a case-by-case basis at the time an MSERC application is submitted. SCAQMD staff, at the time an MSERC application is submitted, will calculate total MSERCs and retire the AB 2766-MSERCs. CONTRACTOR would then receive the balance of the MSERCs not associated with AB 2766 funding.

17. NOTICES

All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by email, U.S. Mail, express, certified, return receipt requested, or a nationally recognized overnight courier service. In the case of email communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. Email communications shall be deemed to have been received on the date of such transmission, provided such date was a business day (Tuesday-Friday) and delivered prior to 5:30pm Pacific Standard Time. Otherwise, receipt of email communications shall be deemed to have occurred on the following business day. In the case of U.S. Mail notice, notice shall be deemed to be received when delivered or five (5) business days after deposit in the U. S. Mail. In the case of a nationally recognized overnight courier service, notice shall be deemed received when delivered (written receipt of delivery).

SCAQMD:

South Coast Air Quality Management District

21865 Copley Drive

Diamond Bar, CA 91765-4178

Attn: Cynthia Ravenstein, MSRC Contracts Administrator, email: cravenstein@aqmd.gov

CONTRACTOR:
 City of Montclair
 5111 Benito St.
 Montclair, CA 91763
 Attn: Noel Castillo, email: NCastillo@CityofMontclair.org

18. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures, or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements.

19. SUBCONTRACTOR APPROVAL

If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Such prior approval applies only to subcontractors not already included in Attachment 1, Statement of Work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.

20. OWNERSHIP

Title and full ownership rights to any equipment purchased under this Contract shall at all times remain with CONTRACTOR.

21. SECURITY INTEREST

CONTRACTOR hereby grants SCAQMD a security interest in any and all equipment purchased, in whole or in part, with funding provided by SCAQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all equipment purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The SCAQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the equipment that is the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such filing.

22. NON-DISCRIMINATION

In the performance of this Contract, CONTRACTOR shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, sex, sexual orientation, age, mental status, medical condition, physical or mental disability, denial of family and medical care leave, denial of pregnancy disability leave, or reasonable accommodations. CONTRACTOR shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352)

and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.

23. CITIZENSHIP AND ALIEN STATUS

- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
- B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

24. ASSIGNMENT AND TRANSFER OF EQUIPMENT

- A. The rights and responsibilities granted hereby may not be assigned, sold, licensed, or otherwise transferred by CONTRACTOR without the prior written consent of SCAQMD, and any attempt by CONTRACTOR to do so shall be void upon inception.
- B. CONTRACTOR agrees to obtain SCAQMD's written consent to any assignment, sale, license or transfer of Equipment, if any, prior to completing the transaction. CONTRACTOR shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Contract. CONTRACTOR is responsible for establishing contact between SCAQMD and the Buyer and shall assist SCAQMD in facilitating the transfer of this Contract's terms and conditions to the Buyer. **CONTRACTOR will not be relieved of the legal obligation to fulfill the terms and conditions of this Contract until and unless the Buyer has assumed responsibility of this Contract's terms and conditions through an executed contract with SCAQMD.**

25. NON-EFFECT OF WAIVER

The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

26. TAX IMPLICATIONS FROM RECEIPT OF MSRC FUNDS

CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of MSRC funds.

27. ATTORNEYS' FEES

In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party in said action shall pay its own attorneys' fees and costs.

28. FORCE MAJEURE

A party shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the party's reasonable control.

29. SEVERABILITY

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.

30. HEADINGS

Headings on the clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

31. DUPLICATE EXECUTION

This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.

32. GOVERNING LAW

This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.

33. PRE-CONTRACT COSTS

Any costs incurred by CONTRACTOR prior to CONTRACTOR receipt of a fully executed Contract shall be incurred solely at the risk of the CONTRACTOR. In the event that this Contract is not executed, neither the MSRC nor the SCAQMD shall be liable for any amounts expended in anticipation of a fully executed Contract. If this Contract is fully executed, pre-contract cost expenditures authorized by the Contract will be reimbursed in accordance with the Payment Schedule and payment provision of the Contract.

34. CHANGE TERMS

Changes to any part of this Contract must be requested in writing by CONTRACTOR and approved by MSRC in accordance with MSRC policies and procedures. CONTRACTOR must make requests a minimum of 90 days prior to desired effective date of change. All modifications to this Contract shall be in writing and signed by the authorized representatives of the parties. Fueling station location changes shall not be approved under any circumstances.

35. PREVAILING WAGES

CONTRACTOR is alerted to the prevailing wage requirements of California Labor Code section 1770 et seq., and the compliance monitoring and enforcement of such requirements by the Department of Industrial Relations ("DIR"). CONTRACTOR and all of CONTRACTOR's subcontractors must comply with the California Public Works Contractor Registration Program and, where applicable, must be registered with the DIR to participate in public works projects. CONTRACTOR shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to

any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and flowing all applicable prevailing wage rate requirements to its subcontractors. Proof of compliance with these requirements must be provided to SCAQMD upon request. CONTRACTOR shall indemnify, defend and hold harmless the South Coast Air Quality Management District against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

36. ENTIRE CONTRACT

This Contract represents the entire agreement between CONTRACTOR and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought.

37. AUTHORITY

The signator hereto represents and warrants that he or she is authorized and empowered and has the legal capacity to execute this Contract and to legally bind CONTRACTOR both in an operational and financial capacity and that the requirements and obligations under this Contract are legally enforceable and binding on CONTRACTOR.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

CITY OF MONTCLAIR

By: _____
Dr. William A. Burke, Chairman, Governing Board

By: _____
Name: _____
Title: _____

Date: _____

Date: _____

ATTEST:
Denise Garzaro, Clerk of the Board

By: _____

APPROVED AS TO FORM:
Bayron T. Gilchrist, General Counsel

By:  _____

//MSRC Master Boilerplate
Revised April 24, 2018

**Attachment 1
Statement of Work
City of Montclair
Contract Number ML18132**

1. Project Elements

- A. The City of Montclair (hereinafter referred to as "CONTRACTOR") is to procure one on-road, light-duty (possessing a gross vehicle weight rating less than 8,501 pounds) zero emission vehicle (battery electric or fuel cell). Hybrid vehicles do not qualify as zero emission.
- B. CONTRACTOR is also to install a total of eight limited access "Level II" type EV charging stations within the City of Montclair. Stations shall meet current Society of Automotive Engineers J1772 standards. Proposed locations are shown in the table below:

City Hall employee parking lot, 5111 Benito Street
Police Department employee parking lot, 4870 Arrow Highway
City Yard, 10835 Monte Vista Avenue

These locations are understood to be tentative; CONTRACTOR shall notify MSRC staff of any location changes.

CONTRACTOR shall be reimbursed according to Attachment 2 – Payment Schedule.

2. Operation Requirements and Reimbursement for Noncompliance: Light Duty Vehicles

Light-duty vehicles are required to operate for a minimum of three years. CONTRACTOR is obligated to comply with the geographical restriction requirements as follows:

- A. Each of the light-duty vehicles funded under this Contract must accrue at least 85% of its annual mileage or engine hours of operation within the geographical boundaries of the South Coast Air Quality Management District for a period of no less than three (3) years from the date the vehicle enters service (new vehicles). Should CONTRACTOR deviate from or fail to comply with this obligation, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for the vehicle as indicated in the table below:

3 year Operational Availability Obligation Termination Occurs	Percentage of MSRC Funds to be Reimbursed
Within Year 1	100%
Between Years 1-2	66%
Between Years 2-3	33%
After Year 3	0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the vehicle ceases to operate in accordance with the geographical restriction.
- C. Should CONTRACTOR sell, lease, transfer, assign or otherwise divest itself of the vehicles during the three year period referred to above, notice shall be provided to SCAQMD no less than 30 days preceding the day the sale, lease, transfer, or assignment is effectuated. The agreement effectuating the sale, lease, transfer or assignment shall state that the

**Attachment 1
Statement of Work
City of Montclair
Contract Number ML18132**

SCAQMD is an intended third-party beneficiary of the agreement and shall include the following requirement: the obligation to accrue mileage within the South Coast Air Quality Management District shall be a continuing obligation of the subsequent purchaser, lessee, transferee, successor in interest, heir or assign and shall remain in full force and effect until the expiration of the three year operation period. This obligation shall be passed down to any subsequent purchaser, lessee or transferee during this three year term and SCAQMD shall be an intended third-party beneficiary of any subsequent agreement. Upon receiving notice of any subsequent sale, lease, transfer, assignment or other divestiture, SCAQMD may elect to either require the reimbursement specified above, or require the subsequent purchaser, lessee, transferee or assignee to comply with the continuing obligation to operate the vehicle for a period of no less than three (3) years from the date the vehicle entered service (new vehicles). Notice of SCAQMD's election of remedies shall be provided to CONTRACTOR and any subsequent purchaser, lessee, transferee or assignee in a timely fashion.

3. Operation Requirements and Reimbursement for Noncompliance: EV Charging Stations

CONTRACTOR is obligated to comply with the Operational Availability requirements set forth as follows:

- A. CONTRACTOR commits to ensuring Level II charging stations remain operational in the original location for a period of no less than three (3) years from the date the station begins operations in either its initial or expanded capacity. Should CONTRACTOR desire to deviate from this obligation, for reasons other than those stated in the EARLY TERMINATION clause of this Contract, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for fueling/charging facilities as indicated in the table below:

3 year Operational Availability Obligation Termination Occurs	Percentage of MSRC Funds to be Reimbursed
Within Year 1	100%
Between Years 1-2	66%
Between Years 2-3	33%
After Year 3	0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the station ceases operation. CONTRACTOR shall not be responsible for any reimbursement to SCAQMD if the obligation is terminated as a result of one or more reasons set forth in the EARLY TERMINATION clause of this Contract.
- C. The obligations of this section shall survive the expiration of the Contract and continue in full force and effect until the applicable operational availability period set forth above has been satisfied.

**Attachment 1
Statement of Work
City of Montclair
Contract Number ML18132**

4. Display of MSRC Logo

CONTRACTOR agrees to permanently display one MSRC decal in a prominent location on each vehicle purchased pursuant to this Contract. Decals will be provided by SCAQMD upon notification that each subject vehicle becomes operational. Decals are approximately twelve (12) inches in height and eighteen (18) inches in width (Note: a smaller decal may be provided if CONTRACTOR demonstrates that application of the standard decal is not feasible). CONTRACTOR shall maintain the decal for the life of the equipment subject to this Contract. Should any decal become damaged, faded, or otherwise unreadable, CONTRACTOR shall request a replacement decal from SCAQMD and apply the new decal in the same or other prominent location. SCAQMD shall not be responsible for damage to paint or other surfaces arising from application or removal of decals.

5. Promotion

CONTRACTOR shall prepare and submit a proposed Public Outreach Plan to promote the MSRC's co-funding of the vehicle and EV charging stations. Acceptable outreach may include, but is not limited to, notices in CONTRACTOR mailings to residents, newspaper notices, flyers, and information items at CONTRACTOR Board meetings and community events. The Public Outreach Plan shall automatically be deemed approved 30 days following receipt by SCAQMD staff, unless SCAQMD staff notify CONTRACTOR in writing of a Public Outreach Plan deficiency. CONTRACTOR shall implement the approved Public Outreach Plan in accordance with the Project Schedule below.

6. Reports

Quarterly Reports: Until vehicles are placed into service and EV charging stations commence operation, CONTRACTOR shall provide quarterly progress reports that summarize the project results to date including, but not limited to: tasks completed, issues or problems encountered, resolutions implemented, and progress to date. Progress reports that do not comply will be returned to the CONTRACTOR as inadequate.

Final Report: A Final Report shall be submitted by the CONTRACTOR in the format provided by SCAQMD staff. The Final Report shall include, at a minimum: a) an executive summary; and b) a detailed discussion of the results and conclusions about this project. CONTRACTOR will identify any barriers encountered and solutions developed to overcome the barriers, and the impact of the project on future electric vehicle projects.

**Attachment 1
Statement of Work
City of Montclair
Contract Number ML18132**

7. Project Schedule

CONTRACTOR shall comply with the increments of progress identified in the following chart. The completion month for each task is based on the date of Contract execution.

Task	Completion
Submit Public Outreach Plan	Month 4
Place light-duty zero-emission vehicle into service	Month 8
Complete EV station installations and enter into service	Month 14
Implement Public Outreach Plan	Month 16
Quarterly report	Quarterly beginning with Month 4
Final Report	Month 17

**Attachment 2
Payment Schedule
City of Montclair
Contract Number ML18132**

Cost Breakdown

Purchase Category	Maximum AB2766 Discretionary Funds payable under this Contract	CONTRACTOR AB2766 Subvention Funds Applied	Other Funds Applied to Match	Total Cost
On-road light-duty zero emission vehicle	\$10,000	\$10,000	\$15,000	\$35,000
EV Charging Stations – Limited Access	\$40,000	\$40,000	\$0	\$80,000
Totals	\$50,000	\$50,000	\$15,000	<u>\$115,000</u>

No funds shall be paid out to CONTRACTOR pursuant to this Contract, until the project described in Attachment 1 is completed and proof of completion is provided to SCAQMD. If the project described in Attachment 1 is not completed and satisfactory proof of completion is not provided to SCAQMD, no monies shall be due and payable to CONTRACTOR. However, reimbursement may be made for vehicle even if charging stations are not yet complete, or vice versa. Proof of completion shall include:

- For vehicle:
 - Proof of vehicle delivery, vehicle acceptance, and placement of vehicle into service; and
 - Documentation of the specific vehicle purchased, including the year, manufacturer, engine (if applicable) and model.
- For EV charging stations:
 - Representative photos of completed stations;
 - A report signed by a responsible official certifying that the station has been completed as described in Attachment 1; and
 - Receipts for equipment and/or invoice(s) from subcontractor(s) performing the installations, if any.

If, at the completion of the Project, the expenditures are less than the Total Cost amount above, the actual amount of AB 2766 Discretionary Funds reimbursed to CONTRACTOR shall be adjusted on a prorated basis, as follows:

- For vehicles, the amount reimbursed to CONTRACTOR shall not exceed the actual amount of AB 2766 Subvention and other funds applied after any manufacturer, federal or state

**Attachment 2
Payment Schedule
City of Montclair
Contract Number ML18132**

rebates and incentives, up to a maximum of \$10,000 per light-duty zero emission vehicle;
and

- For the EV charging stations, the amount reimbursed to CONTRACTOR shall not exceed the actual amount of AB 2766 Subvention and other funds applied.

Additional AB 2766 Discretionary Match Funds will not be available to fund project cost overruns. Any project cost overruns must be funded from other than AB 2766 Discretionary Funds.



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: SEW075

SECTION: RESOLUTIONS

DEPT.: PUBLIC WORKS

ITEM NO.: 1

PREPARER: N. CASTILLO

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 19-3227 DECLARING SUPPORT FOR AND EXECUTION OF THE MEMORANDUM OF UNDERSTANDING BETWEEN INLAND EMPIRE UTILITIES AGENCY AND VARIOUS CHINO BASIN STAKEHOLDERS (AGREEMENT NO. 19-17) FOR PARTICIPATION IN DEVELOPMENT OF THE CHINO BASIN PROGRAM

REASON FOR CONSIDERATION: The development of a Memorandum of Understanding is being presented as a means for various Chino Basin stakeholders with water use interests in the Chino Basin and Inland Empire Utilities Agency (IEUA) to work towards addressing the various sustainability objectives of the Chino Basin Optimum Basin Management Program (OBMP). This includes recycled water compliance, groundwater quality, storage, and recovery programs, and land subsidence mitigation.

IEUA has received a conditional funding approval of \$207 million through the California Proposition 1 Water Storage Investment Program. This \$207 million represents 54% of the total cost of the \$385 million Chino Basin Program (CBP), and is consistent with IEUA's long-range planning priorities. The CBP includes construction of a new advanced water treatment (AWT) facility, wellhead improvements, and related infrastructure basin-wide that aids the region in meeting salinity requirements 8 years earlier than currently anticipated, while increasing local recycled water supplies. Additionally, five projects totaling \$28 million identified in the IEUA 10-Year CIP will be eliminated as a result of the AWT facility coming on line 8 years earlier than previously planned.

IEUA established a CBP Workgroup to provide local input into all aspects of the development of the project, including operations, finance, environmental permitting, and procurement of associated institutional agreements. A formal agreement among all Parties and stakeholders in the CBP is essential to moving forward with the process and required for ongoing agreements with State Water Project Contractors and administering agencies.

The City Council is requested to consider adoption of Resolution No. 19-3227, authorizing support for the MOU for Participation in the Development of the Chino Basin Program, and approving Agreement No. 19-17 authorizing the City's participation in the Memorandum of Understanding. Copies of both documents are attached for City Council review and consideration.

BACKGROUND: IEUA applied for Proposition 1 funding for the Chino Basin Program (CBP) to address critical water quality and supply needs for the region in the first-of-its-kind revolutionary program developed to help the region move beyond traditional water management practices to a program geared towards water optimization.

The California Water Commission approved conditional funding of \$207 million for the CBP through the Proposition 1 Water Storage Investment Program in 2018. Proposition 1 funding will account for 54% of the \$385 million project cost and is the largest funding award IEUA has received to date.

The CBP involves the construction of an advanced water treatment facility (AWT) and distribution system that will treat and store up to 15,000 acre-feet per year of recycled water for 25 years in the Chino Basin Water Bank, creating a new local water supply. The CBP will also provide needed infrastructure within the Chino Basin for added groundwater treatment and interconnections to provide added flexibility. During dry or critically dry years, CBP's partnership with an existing State Water Project Contractor will allow exchange of up to 50,000 acre-feet per year from the Chino Basin resulting in ecosystem benefits north of the Delta.

Staff has been actively engaged with the CBP Workgroup since December 2018 to provide local input in the development of a regional program that best meets the current and future needs of the Chino Basin as a whole. The intent of the CBP Workgroup is to establish a stakeholder working group that would collaborate in the development of the project components, funding assistance for local projects, and performance requirements.

The CBP provides an unprecedented opportunity to deliver already-identified needed water system improvements earlier, at a lower cost, and secure access to water supplies for the future through a revolutionary, collaborative new approach to making every drop count.

FISCAL IMPACT: There is no immediate fiscal impact to the City related to the adoption of Resolution No. 19-3227. The Resolution approves the MOU for Participation in the Development of the Chino Basin program and is legally non-binding.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 19-3227 declaring support for and execution of the MOU between IEUA and various Chino Basin stakeholders (Agreement No. 19-17) for Participation in Development of the Chino Basin Program.

RESOLUTION NO. 19-3227

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MONTCLAIR DECLARING SUPPORT OF THE
MEMORANDUM OF UNDERSTANDING WITH INLAND
EMPIRE UTILITIES AGENCY FOR PARTICIPATION IN
THE DEVELOPMENT OF THE CHINO BASIN PROGRAM
(AGREEMENT NO. 19-17)**

WHEREAS, Inland Empire Utilities Agency (IEUA) applied for Proposition 1 funding for the Chino Basin Program (CBP), an innovative program that was developed to assist the region in moving beyond traditional water management practices towards water optimization; and

WHEREAS, the California Water Commission approved conditional funding of \$206.9 million for the CBP through the Proposition 1 Storage Investment Program in 2018; and

WHEREAS, Proposition 1 Funding will account for 54% of the \$385 million total project cost and is the largest funding award that IEUA has received to date; and

WHEREAS, The CBP involves the construction of an advanced water treatment facility and distribution system that will treat and store up to 15,000 acre-feet per year of recycled water for 25 years in the Chino Basin Water Bank, creating a new water supply; and

WHEREAS, The CBP will provide needed infrastructure within the Chino Basin for added groundwater treatment and interconnections to provide added flexibility; and

WHEREAS, During dry or critically dry years, CBP's partnership with an exiting State Water Project Contractor will allow exchange of up to 50,000 acre-feet per year from the Chino Basin resulting in ecosystem benefits north of the Delta; and

WHEREAS, City of Montclair staff have been actively engaged with the CBP Workgroup since December 2018 to provide input in the development of a regional plan that best meets the current and future needs of the Chino Basin as a whole, including collaboration in the development of project components, funding assistance for local projects, and performance requirements and developed a Memorandum of Understanding for the Chino Basin Program formally initiating the collaborative process between various Chino Basin Stakeholders and the IEUA for the Chino Basin Program; and

WHEREAS, The CBP provides an unprecedented opportunity to deliver already identified water system improvements, approximately eight years earlier, at a lower cost, securing access to water supplies for the future through this revolutionary collaborative approach optimizing water management in the Chino Basin; and

WHEREAS, the City Council of the City of Montclair has confirmed that its goals for water optimization moving forward are consistent with the Memorandum of Understanding, attached to this Resolution as Exhibit A, for participation in the development of the Chino Basin; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Montclair that the City of Montclair supports and adopts the Chino Basin Program Memorandum of Understanding, which shall remain on file in the City Clerk's Office as Agreement No. 19-17.

APPROVED AND ADOPTED this XX day of XX, 2019.

ATTEST:

Mayor

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 19-3227 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2019, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk

Chino Basin Program
Memorandum of Understanding

This Memorandum of Understanding (“MOU”) is entered into effective _____, 2019, between various Chino Basin stakeholders (“Stakeholders”) and the Inland Empire Utilities Agency (“IEUA”) (collectively, the “Parties”).

WHEREAS, Parties have developed and approved various planning documents that have identified the need for investment in infrastructure within the Chino Basin. These investments would help address various sustainability objectives of the Chino Basin Optimum Basin Management Program (OBMP), such as, recycled water compliance, groundwater quality, storage and recovery programs, and subsidence mitigation. The Parties are currently in the process of updating the OBMP.

WHEREAS, IEUA received a conditional funding approval of \$207 million through the California Proposition 1 Water Storage Investment Program.

WHEREAS, IEUA has established the Chino Basin Program (“CBP”) Workgroup to help provide local input in the development of a regional program that best meets the current and future needs of the individual Stakeholders and the Chino Basin as a whole.

WHEREAS, formal funding approval of the CBP requires development of a refined project, including operations, finance, environmental permitting and all associated institutional agreements. A formal CBP Agreement amongst the Parties is essential for successful agreements with State Water Project Contractors and administering agencies.

WHEREAS, this MOU formally initiates the collaborative process with the Parties.

NOW, THEREFORE, the Parties hereby make the following mutual commitments:

1. Work together in good faith to cooperatively plan and evaluate a strategy for the successful development of the CBP and receipt of the \$207 million funding.
2. Collaborate to refine the CBP components, including, but not limited to, water supply sources, infrastructure requirements operations, performance obligations, program costs and Basin impacts to achieve maximum benefit for the Chino Basin and the individual Stakeholders.
3. Develop a CBP Agreement.
4. Support securing additional grants and other funding sources for the CBP.
5. All Parties will work together in good faith to ensure that the CBP Agreement is negotiated and ready for potential execution by Summer 2019, recognizing the urgency of completing the institutional agreements by 2020.

This MOU may be signed in identical counterparts, each of which shall be deemed to be an original and shall constitute one MOU.

Executed this _____ day of February 2019 by:

City of Montclair

Signature Date

Name: Javier John Dutrey

Title: Mayor

Attest:

Signature

Name: Andrea M. Phillips

Title: City Clerk



AGENDA REPORT

DATE: FEBRUARY 19, 2019

FILE I.D.: FIN357

SECTION: RESOLUTIONS

DEPT.: FINANCE

ITEM NO.: 2

PREPARER: D. PARKER

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 19-3230 AMENDING THE MASTER USER FEE SCHEDULE TO ADD A CREDIT CARD CONVENIENCE FEE

REASON FOR CONSIDERATION: In order to effectively implement and administer the purpose and intent of the City's Master User Fee Schedule, staff annually revises certain portions of the Master User Fee Schedule to provide more accurate user fees and, in certain circumstances, to comply with changes that have occurred in county, state, or federal law over the course of the prior year. However, when a new fee is required due to changing circumstances a specific approval and amendment of the Master Fee Schedule is required.

A copy of proposed Resolution No. 19-3230 amending the Master User Fee Schedule is attached for the City Council's review.

BACKGROUND: In 2003, the City Council directed staff to develop a uniform policy for establishing and recovering user fees and further directed that, to the extent possible, such fees be consolidated into a single resolution subject to annual review.

In 2006, the City Council adopted Resolution No. 06-2670 adopting a User Fee Cost Recovery Policy.

User Fee Cost Recovery Policy

It is the policy of the City to establish that fees be maintained to ensure associated costs for the delivery of specified services are appropriately charged to consumers to limit the cost burden on the City's General Fund. Further, cost-recovery levels for any user fee established by resolution of the City Council shall not exceed 100 percent of the actual cost for the service in question.

User fees represent a significant and growing portion of local government revenue as traditional revenue sources have decreased. As competition for tax resource allocation increases and interest in privatization of public services grows, fees and charges will continue to assume a larger role in the diversification of municipal revenue sources.

User fees are considered "special benefits" which are defined as payments made by consumers in direct exchange for government services rendered. User fees are payments for publicly provided services that benefit a specific individual or group of individuals and exhibit "public good" characteristics. Further, user fees are fees that are charged for appropriate services that are of special benefit.

Proposed Master User Fee Schedule Revisions

In administering the Master User Fee Schedule, staff has identified a user fees that needs to be added in order to provide a more accurate user fee schedule and accomplish cost recovery.

Proposed New Fees

The City currently accepts the use of credit cards for customers to pay for sewer and refuse billing, licenses, and permits. This method is convenient for the customer and is beneficial to the City as it guarantees payment and allows the customer an alternative method of payment.

For this convenience and guaranteed payment, the City is charged 3% of a transaction amount by the credit card processing companies. In the past, this charge has not resulted in a large expenditure to the City; however, there have been situations where customers have utilized credit cards to pay for permits ranging in the thousands of dollars. As a result, the City has had to incur approximately 3% of these transaction amounts ranging in the thousands of dollars.

From the customer's point of view the use of credit cards is beneficial from a convenience and/or rewards standpoint; however, to the City it is a source of lost revenue and is in essence subsidizing the cost of services provided to the public by the General Fund.

In order to adhere to the City's User Fee Cost Recovery Policy, City staff is recommending adopting a Credit Card Convenience Fee whereby the customer would have to pay an additional charge to use a credit card to cover the cost charged by the credit card processing companies. City staff is recommending that the Credit Card Convenience Fee be set at 3% of the total transaction amount. The Credit Card Convenience Fee would be equal to what the credit card processing companies charge the City for the processing of credit card transactions. It should be noted that the Credit Card Convenience Fee would in essence function as a pass-through fee.

However, not all credit card transactions are detrimental to the City as the City also receives sewer and refuse billing payments from customers online by using credit cards for payments. This system allows utility customers to make payments when cash resources are not available and expedites collection of funds.

As such, City staff is recommending developing a threshold for the proposed Credit Card Convenience Fee set at \$1,000. Credit card transactions under \$1,000 would not be charged the proposed Credit Card Convenience Fee—only those credit card transactions above \$1,000 would be charged the Credit Card Convenience Fee. Credit card transactions applicable to online sewer and refuse transactions would be excluded from the Credit Card Convenience Fee.

FISCAL IMPACT: Pursuant to prior Resolutions, the City requires that fees be maintained to ensure associated costs for the delivery of specified services are appropriately charged to consumers to limit the cost burden on the City's General Fund.

The establishment of the proposed Credit Card Convenience Fee will reduce the burden of large transactions on the City's General Fund. If adopted, Resolution No. 19-3230 would have an unknown, but positive fiscal impact in the amount of revenue received from services for which the City charges fees.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 19-3230 amending the Master User Fee Schedule to add a Credit Card Convenience Fee.

RESOLUTION NO. 19-3230

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MONTCLAIR AMENDING THE
MASTER USER FEE SCHEDULE TO ADD A
CREDIT CARD CONVENIENCE FEE**

WHEREAS, the City of Montclair has the statutory authority to impose fees, charges, and rates under its regulatory and police power as authorized by the State of California; and

WHEREAS, user fees are imposed for services rendered by the City of Montclair that will benefit a specific individual or group of individuals; and

WHEREAS, there is a need for the City of Montclair to recoup reasonable costs related to the provisions of specified services; and

WHEREAS, user fees are imposed to assign the cost of providing services to the specific individual or group of individuals receiving the benefits of said services, rather than funding said services from General Fund revenues; and

WHEREAS, it is the City Council's direction that all user fees, to the extent possible, are to be reviewed and amended annually, consistent with the User Fee Cost Recovery Policy; and

WHEREAS, the City Council has determined that such user fees are based on reasonable costs to the City for providing said services; and

WHEREAS, the City of Montclair finds it necessary to add a new fee to the current Master User Fee Schedule that was adopted pursuant to Resolution No. 18-3201.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby find and determine as follows:

Section 1. Master User Fee Revisions. A credit card convenience fee equal to 3% of the transaction amount for transaction in excess of \$1,000.00 will be charged on all credit card transactions accomplished by the City with the exception of Sewer and Refuse online payments.

Section 2. Effective Date. This Resolution shall be in full force and effect immediately upon adoption.

APPROVED AND ADOPTED this XX day of XX, 2019.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 19-3230 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2019, and that it was adopted by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON TUESDAY,
FEBRUARY 4, 2019, AT 7:50 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Raft called the meeting to order at 7:50 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Raft, Council Member Ruh, and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of January 22, 2019.

Moved by City Manager Starr, seconded by Mayor Pro Tem Raft, and carried unanimously to approve the minutes of the Personnel Committee meeting of January 22, 2019.

IV. PUBLIC COMMENT – None

V. CLOSED SESSION


At 7:51 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 8:12 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Raft stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 8:12 p.m., Mayor Pro Tem Raft adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager