

**CITY COUNCIL, SUCCESSOR REDEVELOPMENT AGENCY,
MONTCLAIR HOUSING CORPORATION, MONTCLAIR
HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY
FOUNDATION MEETINGS**

AGENDA

Monday, August 2, 2021
7:00 p.m.

Location

Council Chamber
5111 Benito Street
Montclair, CA 91763

Webinar Link

<https://zoom.us/j/93717150550>

Dial #

1-669-900-6833

Meeting ID

937-1715-0550



Mayor Javier "John" Dutrey
Mayor Pro Tem Bill Ruh
Council Members Tenice Johnson,
Council Member Corysa Martinez
Council Member Benjamin "Ben" Lopez

City Manager Edward C. Starr
City Attorney Diane E. Robbins
City Clerk Andrea M. Myrick



**REGULAR JOINT MEETING OF THE
CITY COUNCIL, SUCCESSOR AGENCY, MONTCLAIR HOUSING CORPORATION,
MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR COMMUNITY FOUNDATION**

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

Monday, August 2, 2021
7:00 p.m.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/93717150550>
Dial Number: 1-(669)-900-6833
Meeting ID: 937-1715-0550

*If you want to make a public comment or speak on an agenda item, including public hearing and closed session items, please complete a Speaker Card in the Council Chambers or at <https://www.cityofmontclair.org/public-comment/>. The Mayor/Chair (or the meeting's Presiding Officer) will call on those who submitted requests to speak at the appropriate times during the meeting. Those who did not submit a request to speak who are present at the meeting location may raise their hand during Public Comment to request to speak. Those participating remotely may request speak using the "raise hand" function in Zoom or may dial *9 if on the phone, and then *6 to un-mute when called on to speak. Written comments (200-word limit per agenda item, and 200-word limit for all non-agenda items combined) and requests to speak can also be emailed to cityclerk@cityofmontclair.org at least one hour before the meeting begins.*

Please be aware that technical issues may arise, limiting or removing the ability for live participation in the meeting via Zoom or teleconference; therefore, attending the meeting in-person is the only guaranteed method of live participation.

Audio recordings of Council meetings are available on the City's website at <https://www.cityofmontclair.org/departments/public-meetings/> and can be accessed by the end of the next business day following the meeting.

AGENDA

- 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 — None

VI. PUBLIC COMMENT

*During Public Comment, you may comment on any subject that **does not** appear on this agenda. Each speaker has up to five minutes. The meeting's presiding officer may provide more or less time to accommodate speakers with special needs or a large number of speakers waiting in line. (Government Code Section 54954.3).*

*If you did not submit a Speaker Card and would like to speak on an item on the **Consent Calendar**, please raise your hand during Public Comment to announce the agenda item you would like to provide comments on. The presiding officer will pull the item from the Consent Calendar and will then call on you to speak at the time of the item's consideration.*

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.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

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- 1. Regular Joint Meeting — July 19, 2021 [CC/SA/MHC/MHA/MCF] 113

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- 2. Consider Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project and Determining There is a Need to Continue the Action [CC] 5
- 3. Consider Authorizing the Purchase of a Mobile Column Lift from Bendpak in the Amount of \$40,094.27 and the Installation of an Electrical Circuit in the City Yard Garage by Rymax Electric at a Cost of \$2,950 [CC] 7

C. Agreements

- 1. Consider Approval of Agreement No. 21-38 with Econolite Systems for Traffic Signal Maintenance Services [CC] 8
- 2. Consider Approval of Agreement No. 21-43 with the Inland Valley Humane Society & S.P.C.A. for Animal Control Services [CC] 12
- 3. Consider Approval of Agreement No. 21-47 with EXTTI for Professional Workplace Services in Expert Testimony, Training, and Investigations [CC]
Consider Authorizing the City Manager to Execute Separate Agreements with EXTTI for Specialized Services in Compliance with Agreement No. 21-47 [CC] 28
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D. Resolutions

- 1. Consider Adoption of Resolution No. 21-3301 Approving a List of Projects to be Funded by Senate Bill 1 (SB1) from the State of California Road Repair and Accountability Act of 2017 [CC] 102
- 2. Consider Adoption of Resolution No. 21-3314 Authorizing Placement of Assessments on Certain Properties for Delinquent Sewer and Trash Accounts [CC] 106

IX. PULLED CONSENT CALENDAR ITEMS

X. COMMUNICATIONS

A. Department Reports

- 1. City Clerk — Establishment of City Council Policies and Procedures for the Conduct of Meetings and Other Administrative Matters
- 2. Administrative Services — Recruitment Procedures
- 3. Human Services — Activities and Programs Update

B. City Attorney

1. Request to Meet in Closed Session Pursuant to GC §54956.9(d)(2) Regarding Potential Litigation [CC]

One Potential Case

2. Request to Meet in Closed Session Pursuant to GC §54957.6 Regarding Conference with City’s Designated Labor Negotiator Edward C. Starr [CC]

Agency: City of Montclair

Employee Assocs.: Management, Montclair City Confidential Employees Association, Montclair General Employees Association, Montclair Fire Fighters Association, and Montclair Police Officers Association

C. City Manager/Executive Director

1. COVID-19 Update

D. Mayor/Chairperson

E. Council Members/Directors

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

1. Personnel Committee Meeting — July 19, 2021 [CC]

112

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. 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, August 16, 2021, at 7:00 p.m.

Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Pursuant to the Governor’s Executive Orders in relation to the COVID-19 pandemic, please call the City Clerk’s Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request documents via e-mail.

If you need special assistance to participate in this meeting, please contact the City Clerk’s Office at (909) 625-9416 or e-mail cityclerk@cityofmontclair.org. Notification 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 City’s website at <https://www.cityofmontclair.org/departments/public-meetings/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, July 29, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	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 Ruh has examined the Warrant Register dated August 2, 2021, and the Payroll Documentation dated July 4, 2021, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated August 2, 2021, totals \$6,812,235.56; and the Payroll Documentation dated July 4, 2021 totals \$607,229.07 gross, with \$421,308.31 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	TRN110A
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	S. STANTON
SUBJECT:	CONSIDER RECEIVING AND FILING A STATUS REPORT ON EMERGENCY CONTRACTING PROCEDURES FOR THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT AND DETERMINING THERE IS A NEED TO CONTINUE THE ACTION		

REASON FOR CONSIDERATION: By City Council action on April 19, 2021, Resolution 21-3307 was adopted declaring a need for emergency contracting procedures for the PE Trail Bridge Replacement project. 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 fourth-fifths majority vote, that there is a need to continue the action.

BACKGROUND: The City of Montclair, in coordination with San Bernardino County Transportation Authority (SBCTA), built a multi-purpose trail linking cities from Claremont to Rialto along the famous Pacific Electric Railway Line. This 21-mile trail is a vital component of our Active transportation and Healthy Montclair programs. The trail provides recreational and alternative transportation opportunities for cyclists, pedestrians, runners, and equestrians, and links our residents and the commuting public to schools, jobs, and our regional transportation hub. The 20-acre Montclair Transcenter is the largest facility of its kind between Union Station in Los Angeles and the San Bernardino station, and conveniently connects the region's fixed route commuter rail, bus service, and rideshare programs in one centrally located area. The Pacific Electric trail is a vital connection to this important transportation hub.

On March 21, 2021, the PE Trail Bridge was damaged due to a fire and closed to active transportation traffic. The closure of the bridge disrupts the regional connections of the PE Trail. A structural engineer who investigated the magnitude and extent of the damage, declared the PE Trail bridge a total loss and a replacement was recommended. To mitigate the risks that left the existing bridge vulnerable to fire, the replacement will be a prefabricated steel truss bridge. A steel truss bridge provides the best combination of long term value and affordability, while also recognizing the need for a speedy replacement of this vital piece of infrastructure. The use of a prefabricated bridge saves valuable time since its design has been preapproved by a state licensed structural engineer. Compared to a wooden structure, the construction of the steel truss bridge is completed at an accelerated pace, since it is delivered assembled and dropped into place.

The City of Montclair is a healthier and more equitable City due to safer and more connected roadways through the provision of active transportation options. SBCTA recognizes the value and importance of the PE trail. To that end, SBCTA has shown good faith and leadership by graciously offering to cover a percent of the cost, up to \$100,000, to replace the bridge through their TDA Grant Program. The City would cash flow the project and seek reimbursement from SBCTA at a future date.

Currently Pacific Electric Trail commuters are being detoured from the regional trail to Arrow Highway. To reduce the impact of the bridge closure, City staff will work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. Agreements will be executed in the near future. Any necessary environmental permits and studies will be processed to clear the project through the California Environmental Quality Act (CEQA) and U.S. Army Corps permitting process. A structural engineering consultant, BCA, has been brought on to design the bridge deck and modifications to the existing bridge substructure and foundations to accept the new bridge. Once the design is completed, the bridge deck will be ordered and delivered to the site. In order to replace the bridge a contractor will need to be procured to remove the old fire damaged bridge. The same contractor will be utilized to place the new prefabricated bridge after necessary modifications are made to the existing bridge foundation.

August 2, 2021 Update

Recent activity has included site survey and finalization of the design for the replacement bridge. Cost for the pre-fabricated bridge and delivery is estimated to be \$81,312, with City Council approval of this item, staff will order the bridge from Contech Engineered Solutions on August 3, 2021. Fabrication of the bridge is estimated to take eight weeks and delivery is expected by October 1, 2021. During the time of fabrication, staff will solicit bid proposals for the demolition of the existing bridge and installation of the new bridge. The Pacific Electric Trail is expected to re-open by November 1, 2021.

FISCAL IMPACT: The City's Cost to replace the Pacific Electric Trail Bridge is estimated at \$500,000 and will be funded from the General Fund Reserve. SBCTA has confirmed its intent to contribute \$100,000 from the TDA Grant Program to offset the costs associated with the bridge replacement.

RECOMMENDATION: Staff recommends that the City Council receive and file a status report on emergency contracting procedures for the PE Trail Bridge Replacement Project and determine there is a need to continue the action.



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	TRC600
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	1	PREPARER:	S. STANTON
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-38 WITH ECONOLITE SYSTEMS FOR TRAFFIC SIGNAL MAINTENANCE SERVICES		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-38 with Econolite Systems for traffic signal maintenance services. The prior agreement, Agreement No. 20-19, expired on June 30, 2021. Both the City and Econolite Systems wish to enter into a new contract for a one-year term.

A copy of Proposed Agreement No. 21-38 with Econolite Systems for traffic signal maintenance services is attached for the City Council's review and consideration.

BACKGROUND: At its meeting on April 20, 2020, City Council approved Agreement No. 20-19 with Econolite Systems. The City of Montclair has worked with Econolite for many years and they have provided outstanding service. The institutional knowledge brought by the Econolite team provides unsurpassed value to the City's traffic signal system. Additionally, the rapport that has been built between Econolite Systems and the City's Traffic Engineering Consultant, Albert Grover & Associates, provides excellent traffic signal performance. A recent audit from the San Bernardino County Transportation Authority (SBCTA) resulted in a 96 percent reliability of our signals being in coordination for the efficient and safe movement of traffic. City staff went through a vetting process to make sure that Econolite is the best value for the City. The rates in the new agreement are essentially staying the same. A rate increase of 1.85 percent has been proposed to absorb the cost related to increases in prevailing wage rates. Accordingly, proposals from other firms were not sought, since Econolite continues to be the best value for the City. Staff recommends to continue utilizing Econolite to provide traffic signal maintenance services, since it is in the best interest and value of the City and within our purchasing guidelines.

FISCAL IMPACT: Under the terms of the proposed contract, the monthly preventative maintenance cost will be \$79.20 per intersection. The rates are shown in Exhibit B of Agreement No. 21-38.

The approved budget for Fiscal Year 2021-22 has monies appropriated utilizing the rates established in Agreement No. 20-19. Since the amount of the proposed increases will vary based upon need and future scheduled maintenance, any adjustment necessary in the Fiscal Year 2021-22 budget will be assessed and made during the Midyear Budget Review.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 21-38 with Econolite Systems for traffic signal maintenance services.

AMENDMENT TO AGREEMENT NO. 20-19
WITH
ECONOLITE SYSTEMS
FOR
TRAFFIC SIGNAL MAINTENANCE SERVICES

This agreement is made and entered into this 1st day of July 2021, by and between the CITY OF MONTCLAIR, a municipal corporation hereinafter designated as "City," and ECONOLITE SYSTEMS, hereinafter designated as "Contractor," and collectively designated as the "Parties."

RECITALS

WHEREAS, Parties have previously entered into Agreement No. 20-19 on April 20, 2020, for traffic signal maintenance services; and

WHEREAS, Agreement No. 20-19 included Exhibit B which includes a rate schedule; and

WHEREAS, Parties desire to extend the agreement and amend the rate schedule.

AGREEMENT

NOW, THEREFORE, IT IS AGREED by and between City and Contractor to extend agreement for a one-year term expiring on June 30, 2022.

BE IT FURTHER AGREED by and between City and Contractor that EXHIBIT B of Agreement No. 20-19 referencing COST OF SERVICES shall be replaced with EXHIBIT B of Agreement 21-38 and that that all other terms of Agreement No. 20-19 shall remain as set forth therein.

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.

CITY OF MONTCLAIR, CALIFORNIA

ECONOLITE SYSTEMS

By: _____
Javier John Dutrey, Mayor

By: _____
Title: _____

Attest: _____
Andrea Myrick, City Clerk

By: _____
Title: _____

Approved as to form:

Diane E. Robbins, City Attorney



**EXHIBIT B
COST OF SERVICE 2021**

CPI Increase

Monthly Maintenance / Preventative Maintenance Check per Intersection 79.20

Description (Hourly Labor Rate)	Regular	Overtime	Double Time
Supervisor	111.30	N/A	N/A
Lead Technician	131.75	177.59	223.44
Technician	131.75	177.59	223.44
Lead Utility Technician	131.75	177.59	223.44
Utility Technician	131.75	177.59	223.44
Lab Technician	131.75	177.59	223.44
Laborer	133.22	177.59	223.44
Relamper	73.29	110.64	147.99

Description (Hourly Equipment Rate)	Regular	Overtime	Double Time
Technician Van	14.36	N/A	N/A
Bucket Truck to 36 feet	39.86	N/A	N/A
Utility Truck	39.86	N/A	N/A
Bucket Truck above 36 feet	60.22	N/A	N/A
Crane Truck	155.99	N/A	N/A
Arrow Board	17.33	N/A	N/A
Air Compressor w/ tools	26.00	N/A	N/A
Dump Truck	65.00	N/A	N/A

Materials	Regular	Overtime	Double Time
All	Cost Plus 20%	N/A	N/A

Miscellaneous	Regular	Overtime	Double Time
6-foot diameter loop and lead-in cable	579.65		



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	ANL100
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-43 WITH THE INLAND VALLEY HUMANE SOCIETY & S.P.C.A. FOR ANIMAL CONTROL SERVICES		

REASON FOR CONSIDERATION: The Inland Valley Humane Society & S.P.C.A. (IVHS), the animal control services provider for the City of Montclair, is requesting entering into a new contract with the City for animal care and control services. The City Council is requested to consider approval of Agreement No. 21-43 with IVHS for animal control services.

A copy of proposed Agreement No. 21-43 is attached for the City Council's review and consideration.

BACKGROUND: IVHS is a private nonprofit organization that offers a wide range of animal care and control services. IVHS provides these services to the cities of Chino, Chino Hills, Claremont, Covina, Diamond Bar, Glendora, La Verne, Montclair, Ontario, Pomona, San Dimas, and the unincorporated areas of San Bernardino County including the West End, San Antonio Heights, and Mt. Baldy.

IVHS operates a facility located at 500 Humane Way, Pomona, which offers a wide range of animal care services including adoptions, vaccinations, low-cost veterinary services, pet care information and education. Recent improvements include dog kennel renovations and a new veterinary medical center which will open in Winter of 2022.

The City has contracted with IVHS for animal control services since 1983. The contractual services provided to the City include: collection of stray and unwanted, injured, or deceased animals; enforcement of leash laws and other regulatory Ordinances related to animals within the City; provision of animal ambulance services; and operation of an animal shelter in compliance with state standards pursuant to California Food and Agriculture Code Sections 30501, et seq.

Proposed Adjustment to Animal Licensing Cost Allocation Methodology

Since the City Council's adoption of Agreement No. 06-66 with IVHS for animal control services in 2006, total costs for providing animal control services has increased significantly. Primarily, costs have risen because of increases in operating costs associated with the dramatic rise in the processing of stray dogs and cats, the sheltering of these animals, and the adoption of policies statewide designed to lessen the amount of animals having to be euthanized.

Currently, under the existing cost allocation methodology for agencies contracting with IVHS, the total cost for animal control services is apportioned to the contracting agencies based on service level (calls for service and number of animals handled) and population.

Total costs for animal control services are offset by revenues generated by animal licensing, sheltering, and other service fees charged to the contracting agency's

residents. The contracting agency pays a supplemental sum each year to cover the remaining costs. The supplemental payment increases annually according to changes in the All Cities Consumer Price Index (CPI) for the Los Angeles–Long Beach–Anaheim area, All-Items Indexes, All Urban Consumers not to exceed a maximum of 4 percent change for the previous 12-month period.

In January 2020, staff was notified that IVHS was re-evaluating its existing contracts across all contracting agencies and the cost allocation methodology upon which contract amounts are based. IVHS staff noted that due to increasing costs, the current cost allocation methodology no longer provides sufficient revenues to cover costs associated with providing animal control services and that IVHS would be changing the means by which they calculate total costs. In addition, IVHS staff noted that they would be recommending that all contracting agencies adopt an across-the-board fee structure that would stabilize licensing revenues for all contract agencies as part of their change in cost allocation methodology.

IVHS proposed two cost allocation methodologies, the Gross Cost Model and the Net Cost Model, for the basis of calculating costs related to animal control services.

Under the Gross Cost Model, the City would be invoiced for the gross cost of providing animal control services, minus any licensing, impound and court revenues received on behalf of the City. The total amount of the contract services is \$420,000. Under the Gross Cost Model, the City would be charged the total contract service amount of \$420,000 minus any licensing, impound, and court revenues received during the year.

Under the Net Cost Model, the total amount of the contract service would be \$420,000 minus \$150,000 in guaranteed revenue, resulting in a maximum \$270,000 annual cost to the City. The guaranteed revenue amount is based solely on licensing fees and not any impound or court fees as the goal is to reduce the number of animals having to be impounded and a reduction in court cases. Any revenue above the guaranteed revenue earned on services provided for the City would be split fifty-fifty between the City and IVHS, with the City's half being used to offset the contract cost and the other half being placed in an escrow account by IVHS to be used for medical services at the Humane Society for Montclair residents who cannot afford to spay/neuter and/or microchip their dogs and/or cats. If the licensing fees collected by IVHS for services provided to the City are below the \$150,000 threshold, then IVHS would be required to fill in the gap with other revenues to ensure an annual \$150,000 in revenues for the City.

Table 1, below, identifies the proposed cost to the City using the Gross Cost Model when factoring in solely the average amount of licensing revenue received over the prior four year period.*

**Table 1
Proposed Animal Licensing Cost Allocation Methodology**

<i>Cost Allocation Methodology</i>	<i>Base Contract Cost</i>	<i>Licensing Revenue Average</i>	<i>Net Cost to the City</i>
Gross Cost	\$420,000	\$166,000	\$254,000

**It should be noted that licensing revenues fluctuate year to year depending on a variety of factors including whether or not it is a licensing canvassing year and the amount of fees paid by Montclair residents for either impound and court fees. During the past four years, the average amount of licensing revenue generated equaled roughly \$166,000.*

Table 2, below, identifies the proposed cost to the City using the Net Cost Model when factoring in the guaranteed amount of licensing revenue and a potential shared revenue amount of \$8,000 using the above-referenced licensing revenue estimate of \$166,000.*

**Table 2
Proposed Animal Licensing Cost Allocation Methodology**

<i>Cost Allocation Methodology</i>	<i>Base Contract Cost</i>	<i>Guaranteed Revenue</i>	<i>City's Share of Excess Revenue*</i>	<i>Net Cost</i>
Net Cost	\$420,000	\$150,000	\$8,000	\$262,000

**It should be noted that under the Net Cost model, the City may pay less than the amount noted in Table 2, depending on the amount of licensing revenues generated in any given year.*

In addition to the proposed change in animal licensing cost allocation methodology, IVHS is proposing that the term of Agreement No. 21-43 be for two years with subsequent automatic renewals. Each renewal would be for two years, with each successive renewal being for two years unless terminated by either party. Either party may terminate Agreement No. 21-43 with written notice of intent to terminate at least 90 days prior to the scheduled expiration of each renewal term. Agreement No. 21-43 does include language that would allow for adjustments to the annual fee based upon the CPI with a maximum increase amount of 4 percent of the CPI - All Items for All Urban Customers, Los Angeles-Long Beach-Anaheim.

FISCAL IMPACT: Given current licensing revenue trends, staff is recommending that the City enter into a new agreement with IVHS utilizing the Net Cost Model instead of the Gross Cost Model. While the Gross Cost Model could be more cost effective for the City initially, licensing revenue trends fluctuate year to year.

IVHS staff has indicated that they would be recommending that all contracting agencies adopt an across-the-board fee structure to help stabilize licensing revenues for all contract agencies as part of their change in cost allocation methodology. IVHS has provided the City with a copy of the proposed fee structure and staff is currently evaluating the proposed fees. If adopted, the proposed fee structure may further increase the amount of revenue received.

The cost associated to the General Fund for Fiscal Year 21-22 pertaining to Agreement No. 21-43 is estimated to be \$262,000 and is incorporated in Fiscal Year 21-22 Budget. The cost to the General Fund for Fiscal Year 22-23 is estimated to be \$278,800 based on a maximum 4 percent CPI adjustment to the base contract cost.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-43 with the Inland Valley Humane Society & S.P.C.A. for animal care and control services.

ANIMAL SHELTER AND ANIMAL CONTROL SERVICES AGREEMENT

THIS ANIMAL SHELTER AND ANIMAL CONTROL SERVICES AGREEMENT

("Agreement") is made and entered into this ____ day of _____, 2021, by and between the CITY OF MONTCLAIR, a municipal corporation (hereinafter referred to as "City"), and THE HUMANE SOCIETY OF POMONA VALLEY INC. dba INLAND VALLEY HUMANE SOCIETY & S.P.C.A., a nonprofit corporation (hereinafter referred to as "Humane Society").

WHEREAS, the purpose of entering into this Agreement is to contract for animal shelter and animal control services with Humane Society under the terms and conditions as provided herein;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, it is mutually agreed by and between City and Humane Society (hereinafter "Party," individually, or "Parties," collectively), as follows:

1. **Humane Society Services:**

(a) **Generally:** The services to be performed by Humane Society pursuant to this Agreement include the maintenance and operation of an animal shelter in compliance with California law, implementation and enforcement of Food and Agriculture Code sections that apply to animal control, licensing, rabies control and investigation and/or prosecution of animal cruelty and potentially dangerous or vicious dogs cases, including but not limited to California Food and Agriculture Code section 30501, et. seq., enforcement of all applicable City or County ordinances, and the services set forth in Exhibit 1 attached to this Agreement.

(b) **Administrative Citations: Issue and Collection:** Humane Society will issue and collect payment of administrative citations for violation of statutes, regulations or ordinances related to animals and animal control. City must adopt a municipal code or ordinance authorizing Humane Society to issue administrative citations for the purpose of enforcing City code pertaining to animals and to facilitate the collection of associated fines and/or fees if City has not already implemented such a code or ordinance.

2. **Non-Discrimination:**

Humane Society is an equal opportunity employer and subject to, and in compliance with, applicable State and Federal Anti-Discrimination laws. Humane Society does not discriminate on the basis of race, color, national origin, religion, marital status, ancestry, disability, sex, sexual orientation, age, genetic information, veteran status or any other protected class.

3. **Cooperation with Health Department:**

Humane Society agrees to cooperate with the California Department of Health Services and the health departments of all governing counties in matters pertaining to rabies and animal quarantine. In cooperation with the state and local health departments, Humane Society will conduct animal inoculation programs as required.

4. **Cooperation and Correspondence:**

(a) **Cooperation:** City agrees that its departments, employees and agents shall cooperate with Humane Society in the performance of the services to be performed by Humane Society under this Agreement. City's cooperation includes promoting Humane Society programs and services through its social media, City website and City Newsletters. City

agrees to provide information or feedback requested by Humane Society in a timely manner so that Humane Society can fulfill its legal and contractual obligations. If Humane Society or City requests assistance on a call, City and Humane Society mutually agree to immediately dispatch City police officer(s) or Humane Society employee(s) in a timely manner for the safety and protection of the police officer(s), Humane Society employee(s), and City residents. City further agrees that its employees and agents will not interfere with Humane Society's performance of the services set forth in this Agreement and Humane Society likewise agrees that its employees will not interfere with City police officer(s) in performance of their duties. Each Party agrees not to make false or defamatory comments about the other Party in order to have and promote a positive working relationship for the duration of this Agreement.

(b) **Designated Representatives:** City designates as the sole representative of City, its city manager or the person designated by the city manager to work with Humane Society in all matters involving the implementation of this Agreement. Humane Society will designate a contract liaison at the time this Agreement is executed. The contract liaison shall be the person identified in Paragraph 23 (Notice), below. Humane Society designates its Administrative Services Director as its designed representative. To the extent possible, and except in the case of an emergency, all correspondences between the Parties should be initiated between their designated representatives, who are identified in the "Notice" section below. In the event of an emergency or after-hours, correspondence from the City to Humane Society should be initiated through the after-hours phone number. If either Party changes their designee, notice shall be provided to the other in writing before the new designation becomes effective.

(c) **Notice:** In conjunction with Paragraphs 15 and 23, the City agrees that it shall contact any of the following persons in the event of concerns regarding handling of services, any part of this Agreement, or any alleged default or breach of this Agreement:

- (i) Humane Society's designated contract liaison; or
- (ii) The President/CEO of Humane Society

The City shall not claim any default or breach of this Agreement unless and until it has contacted one of the Humane Society representatives listed above, as shown in an email or other written correspondence and given the Humane Society representative adequate time to respond, consistent with Paragraph 15, below.

5. **Compensation Paid to Humane Society:**

In exchange for Humane Society performing the duties set forth herein, City agrees to compensate Humane Society in the following manner:

(a) **Annual Fee to Humane Society:** City shall pay Humane Society for the fiscal year of July 1, 2021 to June 30, 2022, the sum of four hundred and twenty thousand dollars (\$420,000.00) payable in equal monthly payments of thirty-five thousand dollars (\$35,000.00) commencing on July 1, 2021 and continuing each month thereafter on or before the first day of the month, up to and through June 30, 2022. Thereafter, compensation shall be calculated in the manner set forth in Paragraphs 5(c) ("Annual Fee").

Guaranteed Revenue Credits: Humane Society shall receive and retain all payments collected for dog and cat licenses and related late fees, impound fees, kennel care fees and court fines collected on behalf of City as a result of City's animal control program. Any fees collected by Humane Society in connection with City's animal control program shall be automatically remitted to Humane Society. The City is guaranteed a minimum annual revenue by the Humane Society in the amount of one hundred and fifty thousand dollars

(\$150,000.00) (“Guaranteed Revenue”) The Guaranteed Revenue will be credited against the Annual Fee set forth in Paragraph 5(a) above, and subsequently calculated in Paragraph 5(d) below. If Humane Society is unable to collect the full Guaranteed Revenue during any term year, Humane Society will credit City the entire Guaranteed Revenue amount, which will be credited to City on the final (June) invoice for that year. Any revenue collected on behalf of the City in excess of the Guaranteed Revenue shall be shared with Humane Society 50/50 and credited toward the Annual Fee due to Humane Society. The Humane Society’s excess revenue portion will be placed in an escrow account to be used for medical services at the Humane Society for City residents who cannot afford to spay/neuter and/or microchip their dogs and/or cats.

(b) **Invoices and Payments:** Humane Society will provide City with a monthly invoice and reconciliation of collected licensing fees on City’s behalf. The amounts collected each month shall be deducted from the Annual Fee owed by City to Humane Society set forth in Paragraph 5(a). If City has any questions or disputes regarding the reconciliation, it shall have 15 days in which to request clarification. If City does not seek clarification within 15 days, the reconciliation will be considered accurate for all purposes. Payment of the invoice is due no later than fifteen (15) days after receipt of the invoice. If there is any question or dispute regarding the reconciliation, all non-disputed amounts shall be paid. Once the questioned or disputed portion of the reconciliation is resolved, City shall have five (5) business days to pay any outstanding amounts. If City does not pay the Humane Society’s invoice in a timely manner, a late fee of \$100 shall be assessed. If the legal action is instituted by either party in regard to disputed payments, the prevailing party shall be entitled to legal fees and court costs pursuant to Section 19 below. If Humane Society must take action to collect outstanding fees and is deemed the prevailing party in such dispute, City shall be responsible for and shall pay all reasonable fees and costs associated with collections, including legal fees and court costs pursuant to Section 19 below.

(c) **Consumer Price Index Increase:** The Annual Fee paid to Humane Society shall automatically increase effective July 1, 2022 and each July 1st of each subsequent year that is not a Term Renewal year in which a Pooled Use Adjustment occurs, during the term of this Agreement by an amount equal to the annual percentage increase in the Consumer Price Index – All Items for All Urban Customers, Los Angeles-Long Beach-Anaheim (“CPI”). The percentage increase is determined by comparing the published monthly index for December to the prior year index for December, up to the maximum of four percent (4%) of the previous year’s Annual Fee paid to Humane Society. There shall be no reduction in the amount due to Humane Society if the CPI is negative.

6. **Pooled Use Adjustment:** City’s Pooled Use percentage shall be adjusted at each Term Renewal to accurately reflect the City’s use of Humane Society services. If City’s Pooled Use percentage increased during the prior Term or Term Renewal period, the annual fee shall be increased by the same percentage increase as the City’s Pooled Use percentage increased. If City’s Pooled Use percentage decreased during the Term or Term Renewal period, the annual fee shall be decreased by the same percentage decrease as the City’s Pooled Use percentage decreased. IVHS will provide City with its Pooled Use percentage at Term Renewal. IVHS will provide City with its Pooled Use percentage no later than March 1st at Term Renewal.

Pooled Usage is determined by analysis of several factors, including the percentage service load of City, in conjunction with City’s population, such that the City’s use of Humane Society resources is fairly allocated amongst Humane Society’s partner cities and City is charged accordingly.

7. Availability of Service:

(a) **Office Hours:** Humane Society office hours are 8:00 a.m. to 5:30 p.m. on Monday, Tuesday, Thursday, Friday and Saturday and 8:00 a.m. to 7:00 p.m. on Wednesday. City shall use the after-hours telephone number in the event of an emergency. The emergency number the City should use is 909-594-9858, or any other telephone number Humane Society provides to City from time to time under the notice provisions set forth herein.

(b) **Animal Shelter Hours:** Humane Society shelter hours are 10:00 a.m. to 5:30 p.m. on Monday, Tuesday, Thursday, Friday and Saturday and 10:00 a.m. to 7:00 p.m. on Wednesday.

(c) **Closure:** Humane Society is closed on Sunday and most major holidays. Any changes to Humane Society office or shelter hours shall be promptly communicated to City and this Paragraph 7 of the Agreement shall be deemed revised accordingly.

8. Books and Records:

Humane Society shall maintain books of expenditures and revenues received regarding services provided to City according to its established retention policy. Such records and books shall be made available for inspection upon City request at Humane Society's offices during regular business hours within a reasonable time following the request by City. City shall not have any contractual right to control Humane Society books or records. If costs are incurred in order to comply with a City request to inspect records and books, such costs shall be documented by Humane Society and reimbursed to Humane Society by City upon request by Humane Society, within 30 days.

9. Indemnification and Hold Harmless:

(a) Humane Society represents that it possesses the necessary qualifications to perform the services and duties set forth in this Agreement and shall perform the services and duties consistent with the standard of care in the industry generally recognized in the State of California.

(b) Humane Society, its employees, agents and subcontractors are not employees of City. Humane Society is an independent contractor and shall have no authority to bind City or to create or incur any obligation on behalf of, or liability against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in a writing signed by the Parties.

(c) Humane Society shall indemnify, defend and hold harmless, City, its elected and appointed officials, officers, agents and employees (collectively "Indemnitee") from and against any and all liabilities, losses, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, costs and expenses of litigation, including reasonable attorneys' fees ("Claim"), which Indemnitee may become subject to by reason of or arising out of any personal injury, death or property damage caused by Humane Society, by and through its agents, officers, directors or employees while performing under this Agreement. However, if the Claim arises as a direct result of the City's active negligence or willful misconduct, then City shall indemnify, defend and hold Humane Society harmless in the manner set forth herein, including Humane Society's officers, directors, employees and agents.

(d) In the event that any action or proceeding is brought against Indemnitee by reason of any of the matters against which Humane Society has agreed to indemnify Indemnitee, Humane Society, upon notice from City, shall agree to defend Indemnitee at Humane

Society's expense by competent legal counsel of Humane Society or its insurance carrier's choosing. Humane Society shall not be obligated to pay for independent legal counsel retained by City if Humane Society makes competent legal counsel available to City. City agrees to notify Humane Society within five (5) days of its receipt of notice or service of legal process by a third party regarding a Claim allegedly caused by the acts or omissions of Humane Society, its agents, officers, directors or employees, acting within the scope of this Agreement. In the event of a Claim caused by City's officials, agents or officers, City agrees to defend Humane Society in the same manner as set forth in this Paragraph 9(d).

(e) Humane Society's indemnification under this Agreement does not extend to liabilities, losses, claims, demands, actions, causes of action, proceedings, suits, damages, judgments, costs and expenses of litigation, including attorney's fees, which Indemnitee may suffer or incur or which Indemnitee may become subject to by reason of or arising out of any injury to or death of any person(s), damage to property, or loss of use of property caused by the active negligence or willful misconduct of City, its elected and appointed officials, officers, agents, employees, volunteers or representatives.

(f) The insurance required to be maintained by Humane Society under Paragraph 10 shall ensure Humane Society's obligations under this Paragraph 9, however the limits of such insurance shall not limit the liability of Humane Society hereunder. The provisions of Paragraph 9 shall survive the expiration or earlier termination of this Agreement.

10. Insurance:

Humane Society shall, at its expense, procure and maintain insurance against Claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services set forth in this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII.

Humane Society shall maintain the following minimum scope and limits of insurance:

(a) **Minimum Scope of Insurance:** Coverage shall be as follows:

- *General Liability:*
Insurance Services Office Commercial General Liability Coverage.
- *Automobile Liability:*
Insurance Services Office Business Auto Coverage (Code 1 (any auto)).
- *Workers' Compensation and Employers' Liability:*
Workers' Compensation insurance as required by the State of California and Employers' Liability Insurance.
- *Errors and Omissions Liability:*
Insurance appropriate to Humane Society's profession.

(b) **Minimum Limits of Insurance:** Limits no less than:

- *General Liability:*
\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities associated with this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- *Automobile Liability:*
\$2,000,000 per accident for bodily injury and property damage.
- *Workers' Compensation and Employers' Liability:*
Workers' Compensation limits as required by the Labor Code of the State of

California. Employers' Liability limits of \$1,000,000 per accident for bodily injury or disease.

- *Errors and Omissions Liability:*
\$1,000,000 per claim.

(c) **Other Provisions:**

- (i) **All Policies:** Each insurance policy required by Paragraph 10 shall be endorsed and state that the coverage shall not be suspended, voided, cancelled by the insurer or either Party to this Agreement, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

Any failure to comply with the reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to City, its officers, officials, employees or volunteers.

Any deductibles or self-insured retentions must be declared to and approved by City.

- (ii) **General Liability and Automobile Liability Insurance:** City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds for liability arising out of the services provided by Humane Society as set forth in this Agreement; premises owned, occupied or used by Humane Society; or automobiles owned, leased, hired or borrowed by Humane Society. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials or employees.

Humane Society insurance shall be primary insurance with respect to City, its officers, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, employees or volunteers shall apply in excess of, and not contribute with, Humane Society's insurance.

Humane Society's insurance shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of insurer's liability.

- (iii) **Subrogation:** The Parties agree to waive all rights of subrogation against the other, including their officers, officials, directors, employees and agents for losses arising from this Agreement, which are covered by insurance.

- (iv) **Certificates of Insurance:** Humane Society agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance sufficient to satisfy City that the insurance provisions of Paragraph 10 of this Agreement have been complied with. The City attorney may require that Humane Society furnish City with copies of original endorsements effecting coverage as required by Paragraph 10 of this Agreement. The certificates or endorsements must be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

11. Term:

This Agreement shall be for two (2) years, commencing on July 1, 2021 and shall expire on June 30, 2023 (“Term”).

12. Term Renewal:

Unless either Party gives express written notice of its intent to terminate this Agreement at least ninety (90) days prior to the scheduled expiration date of the initial Term, it shall automatically renew for a successive two (2) year term. Thereafter, the Agreement shall automatically renew for two (2) years for each successive term (“Term Renewal”) until terminated in writing by one of the Parties as provided in Paragraph 13 or modified by the Parties in writing.

13. Termination:

After the completion of the initial Term, either Party, at any time, may terminate this Agreement without cause upon the giving of no less than one hundred eighty (180) days prior written notice to the other Party of the intent to terminate. This notice shall include the date of termination which shall be no less than one hundred eighty (180) days following the date of the notice. In the event of such a termination, Humane Society shall be paid for all work performed under the Agreement through the date of termination. However, if the termination occurs prior to the end of a Term or Term Renewal, City shall not be entitled to a credit for the full Guaranteed Revenue amount; City shall only be entitled to credit for revenue actually collected from July 1 through the date of termination of the year in which the Agreement is terminated. However, the City reserves the right to a credit for the full Guaranteed Revenue in the event of termination due to a breach by Humane Society. In the event that the Agreement is terminated by City, Humane Society will cooperate with City in transferring the animals sheltered and animal control services to any other consultant or provider chosen by City to perform the animal shelter and animal control services. These additional expenses include, but are not limited to, the identification and relocation of animals, transfer of records, including medical records, and other costs related to the transfer of the responsibility for animal sheltering and animal care services from Humane Society.

If termination is initiated with no breach of contract by the Humane Society, revenue will be credited to the City based on actual receipts for the service period with no additional guaranteed revenue included. There will be no pro-ration of guaranteed revenue.

14. Renegotiation Upon Occurrence of Certain Events:

(a) **Mandatory Spay and Neuter Legislation:** Notwithstanding any other provision in this Agreement, City agrees to renegotiate the terms of this Agreement if City or the State of California adopts a municipal code section, statute, regulation or ordinance requiring the mandatory spay and neuter of dogs and/or cats within City’s limits. City also agrees to renegotiate the terms of this Agreement if mandatory spay and neuter is added as a requirement for the licensing of dogs and/or cats within City limits. City agrees to this renegotiation notwithstanding the specific terms of the municipal code section, statute, regulation or ordinance regarding the age of the animal and any exceptions or exemptions to the municipal code section, statute, regulation or ordinance. This renegotiation is justified because of the increased cost to Humane Society to enforce the new municipal code section, statute, regulation or ordinance. The renegotiation contemplated in this Paragraph will commence within fifteen (15) days of the final approval of the municipal code section, statute, regulation or ordinance.

(b) **Renegotiation Following Passage of Other State or Local Legislation with Fiscal Impact on Animal Control Services:** In addition to Paragraph 14(a) above, the Parties agree to renegotiate this Agreement upon the passage of any state or local legislation that has a fiscal impact on animal control or animal care services.

(c) **Re-calculation of Pooled Use Percentage Upon Termination of Service by a Member of the Pool:** The Parties agree to renegotiate this Agreement if any city in the pool terminates their service agreement with Humane Society. Humane Society will contact City to advise of any “Significant Change” in the pool and the City’s Pooled Use. Significant Change shall mean an increased Pooled Use of 1% or more.

15. Opportunity to Cure:

In the event of an alleged breach of this Agreement by either Party, express written notice containing an explanation of the alleged breach must be provided to the allegedly breaching Party within ten (10) days of the alleged breach or reasonable discovery of the alleged breach. The allegedly breaching Party must be given a reasonable time to cure following the written notification, if the time to cure is not already contained in this Agreement. Unless otherwise set forth herein, a reasonable time to cure shall be considered thirty (30) days, however, in the event the breach cannot be cured in said time frame, the breaching party must have made efforts to cure within 30 days and must provide a reasonable time frame for completion of the necessary cure. In the event the breaching Party fails to cure within the reasonable time frame, this Agreement shall terminate upon 90 days written notice by the non-breaching Party to the breaching Party. If City fails to pay for services for three or more consecutive months, Humane Society has the right to terminate this Agreement upon thirty (30) day notice.

16. Merger and Integration Clause:

This Agreement and Exhibit 1 attached hereto contain the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersede all prior negotiations, agreements and understandings with respect thereto.

17. Severability Clause:

If any provision of this Agreement is held to be unenforceable, then such provision will be modified to reflect the Parties’ intentions. All remaining provisions of this Agreement shall remain in full force and effect.

18. Prohibition Against Transfers:

Neither Party may assign or otherwise transfer or delegate any right or duty under this Agreement without the express written consent of the other Party. Any attempt to do so without the express written consent of both Parties shall be null and void and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment or transfer.

19. Attorneys’ Fees:

In any litigation, arbitration or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract or tort) or seeks to enforce an equitable right, including a declaration of a Party’s rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorney’s fees and all costs incurred in the matter.

20. Force Majeure:

Neither Party will be considered to be in default of this Agreement as a result of events beyond their reasonable control. For purposes of this Agreement, such events shall include, but are not limited to, acts of God, terrorism, war, catastrophe, or other similar “force majeure” events beyond the Parties’ reasonable control.

21. Authorized Parties:

Each Party to this Agreement has the authority to enter into and form this Agreement. The individuals signing this Agreement have the authority to act as agents of their respective organizations. Each Party acknowledges that they have read the Agreement and will abide by the terms set forth herein. The Parties acknowledge that they have each been represented by an attorney of their choosing. All statutory presumptions regarding drafting of this Agreement are waived, and there shall be no statutory presumption in favor of one Party or against another Party, including regarding ambiguity or interpretation.

22. Choice of Law:

This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of California. In the event of legal action regarding this Agreement, venue shall be in the County of Los Angeles .

23. Notices:

A notice required or desired to be given pursuant to this Agreement shall be given in writing and sent by US Mail with tracking capacity or by a delivery service, such as FedEx or UPS, or by email, addressed as follows:

<u>For City</u>	<u>For Humane Society</u>
Edward C. Starr, City Manager	James Edward, Administrative Services Dir.
City of Montclair	Inland Valley Humane Society & SPCA
5111 Benito Street, PO Box 2308	500 Humane Way
Montclair, CA 91763	Pomona, CA 91766
(909) 626-8571	(909) 706-4601
ecstarr@cityofmontclair.org	jedward@ivhsspca.org

Any notice given by a Party shall be considered served on the other Party three (3) business days after the date of mailing, unless it was specifically sent by overnight, in which case it shall be deemed served the next business day. Any notice provided by email shall be deemed given that day if it is delivered before 4:30 pm and the next business day if delivered after 4:30 pm. The person or address (physical or electronic) for notice may be changed by giving written notice of such change pursuant to this Paragraph.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have accepted, made and executed this Agreement upon the terms, conditions and provisions above stated the day and year first above written.

CITY OF MONTCLAIR, a Municipal Corporation:

THE HUMANE SOCIETY OF POMONA VALLEY, INC. dba INLAND VALLEY HUMANE SOCIETY & SPCA, a California Non-Profit Corporation:

By: Mayor

By: President/CEO

Date

Date

ATTEST

By: City Clerk

By: Secretary

Date

APPROVED AS TO FORM:

By: City Attorney

Date

EXHIBIT 1

Services Provided by Humane Society

1. Animal Control Officer Availability:

- (a) Animal Control Officers are available 7:30 a.m. to 9:00 p.m. Monday through Sunday and major holidays.
- (b) Animal Control Officers are available for emergencies 9:00 p.m. to 7:30 a.m. Monday through Sunday and major holidays.

2. Animal Control Services Provided:

- (a) Dispatching of animal related calls.
- (b) Patrol for, rescue and sheltering for loose stray dogs, and confined cats and dogs.
- (c) Rescue and sheltering for large animal/equine.
- (d) Removal of deceased animals.
- (e) Wildlife education and relocation of nuisance wildlife in coordination with US Dept. of Fish and Wildlife.
- (f) Humane euthanasia of animals that are irremediably suffering.
- (g) Chemical capture and rescue for stray animals unable to be trapped.
- (h) Response to nuisance calls (i.e. dog barking, leash law violations, etc.).
- (i) Dog bite reporting and coordination with the local health department on necessary quarantine.
- (j) Investigation of potentially dangerous and vicious dog bite cases, and preparation for potential administrative hearings and/or court cases.
- (a) Investigation and prevention of animal cruelty; preparation for potential court cases.

3. Sheltering Services:

- (a) Food, care and medical treatment.
- (b) Humane euthanasia for sick, injured or animals that are irremediably suffering.
- (c) OBS (Dog Bites) housing, protective custody housing for PD impounds, pending court cases, and other special housing as mutually determined by the City and Humane Society.

4. Rabies Control:

- (a) Humane Society will provide:
 - (i) Low cost rabies vaccinations.
 - (ii) License renewals.
 - (iii) License delinquent notifications.
 - (iv) Rabies Certificates.
 - (v) Letters to private veterinarians in the City for rabies certificates & compliance with State law.
 - (vi) Canvassing - Humane Society may, but is not required to, canvass for dog license compliance on a door-to-door basis from time to time, as Humane Society determines in its absolute and sole discretion. If canvassing occurs, Humane Society will provide City notification in advance. A license inspector will visit each residence to verify that all dogs residing therein are appropriately licensed and have a current certificate of rabies inoculation.

5. Owned Animal Services/Fee for Service:

- (a) Humane Society will provide and may charge a fee for:
 - (i) Deceased animal pick-up.
 - (ii) Euthanasia for owner-relinquished sick and/or injured animals.
 - (iii) Cremation services for deceased animals.
 - (iv) Adoption of owner-relinquished animals.
 - (v) Special circumstance ambulance service for transport to veterinary hospital.
 - (vi) Assistance to owners for confinement and movement of animals.

6. Miscellaneous Services Provided by Humane Society:

- (a) Microchips for all animal adoptions and owner redemptions.
- (b) Reduced fee vaccines, microchips, spay and neuter, and other veterinary services for community members' pets.
- (c) Disaster response/temporary sheltering for displaced animals from the disaster.
- (d) Free adoptions for veterans and active military members.

7. Humane Education:

- (a) Humane Society will provide education for responsible pet ownership or wildlife.
- (b) Humane Society will maintain a website and social media platforms available to City's constituents.
- (c) Humane Society may participate in community events and/or presentations to promote responsible pet ownership, wildlife education and adoptions.
- (d) Humane Society may use City logo in certain educational and promotional material.



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	LEG150
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	3	PREPARER:	E. STARR
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-47 WITH EXTTI FOR PROFESSIONAL WORKPLACE SERVICES IN EXPERT TESTIMONY, TRAINING, AND INVESTIGATIONS		
	CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE SEPARATE AGREEMENTS WITH EXTTI FOR SPECIALIZED SERVICES IN COMPLIANCE WITH AGREEMENT NO. 21-47		

REASON FOR CONSIDERATION: The City is required to provide training to elected and appointed officials and supervisory and non-supervisory employees on a variety of topics including ethics, harassment, reasonable accommodation, and other employment-related matters. Further, the City is required to conduct investigations related to a variety of issues including, but not limited to, sexual harassment, discrimination, wrongful termination, retaliation, and employee misconduct. The independent consultant the City has worked with over the past 15 years to provide the above-referenced workplace services, Donna R. Evans, is now employed by a professional services firm. The City must approve a contract with her new employer to continue using her services.

The City Council approves agreements between the City and professional service organizations. A copy of proposed Agreement No. 21-47 with EXTTI is attached for the City Council's review and consideration.

BACKGROUND: Since 2005 the City has used the professional legal, investigative and training services provided by Donna R. Evans, first through agreement with Liebert Cassidy Whitmore (LCW), a legal firm used by the City for labor relations and personnel matters; and then as an independent professional corporation under the name Donna R. Evans, Esq., PC.

Recently, Mrs. Evans transitioned to work with the firm, EXTTI, Incorporated, a professional corporation providing the following services:

1. **Expert Testimony.** Expert witness testimony and consulting in sexual harassment, discrimination, wrongful termination, reasonable accommodation and other employment-related litigation. EXTTI professionals are qualified to testify concerning the adequacy of an employer's investigation, the reasonableness of their conclusions, and the propriety of the actions taken in response. Expert testimony is often crucial in harassment, discrimination and retaliation lawsuits, and has become fundamental in wrongful termination lawsuits involving investigations into employee misconduct.
2. **Training.** Training on preventing sexual harassment, discrimination, retaliation, ethics, wrongful termination, how to conduct workplace investigations, and reasonable accommodations and the interactive process. Courses are conducted using interactive methods, workbooks, and PowerPoint presentations. Programs teach both supervisory and non-supervisory employees about each of the specific training topics, how to recognize wrongful behavior, and what to do if wrongful behavior is encountered.

3. **Investigations.** EXTTI conducts investigation of claims of harassment, discrimination, retaliation, and employee misconduct. Conducting a proper investigation is crucial when allegations of harassment, discrimination or retaliation arise in the workplace, and when employee misconduct is alleged. In nearly each of the preceding matters, state and federal law and employer policies and procedures require such an investigation. EXTTI staff are professional workplace investigators trained to conduct neutral, impartial investigations performed under the supervision, direction and control of a labor and employment attorney. The City of Montclair typically performs investigations in-house; however, the services of a professional investigative firm may sometimes be required to maintain complete objectivity in the investigative process. EXTTI does not disclose information gathered in the course of preparing or processing investigative reports except to clients, at a client's direction, or as required by law.

Donna R. Evans is a former labor and employment litigator and served as an adjunct instructor at California State University, Fullerton. Her legal background includes civil litigation and trial experience in healthcare, insurance, labor and employment law. She is a member of the State Bar of California – Labor and Employment Law Section, a member of the Association of Workplace Investigators (AWI), and an AWI Certificate Holder (AWI-CH). For the past seven years, Mrs. Evans has served as a faculty member for AWI's training institute and regularly teaches specialized seminars in public sector workplace investigations. Mrs. Evans holds Title IX certificates of training and has received specialized training from the National Center for Campus Public Safety for trauma-informed sexual assault investigation and adjudication. She also bring years of experience in (1) investigation of claims of harassment, discrimination, and employee misconduct, including complaints under Title IX; (2) executive and staff training for workplace conduct, leadership, communication, ethics, performance management and bullying; and (3) expert witness testimony and consulting in sexual harassment, discrimination, retaliation and wrongful termination litigation.

FISCAL IMPACT: The fiscal impact in any fiscal year is indeterminate and would be based on the type and level of professional services used, based on the following schedule of fees and as included in Exhibit A, attached to the Retainer Agreement.

Fee Schedule

Expert Testimony

President: \$600 per hour
Vice President: \$500 per hour

Investigative Services

AWI Certified Director: \$275 to \$350 per hour

Training Services

Half-day: \$2,000
Full-day: \$3,500

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

1. Approve Agreement No. 21-47 with EXTTI for professional workplace services in expert testimony, training, and investigations; and
2. Authorize the City Manager to execute separate agreements with EXTTI for specialized services in compliance with Agreement No. 21-47.



Retainer Agreement

This agreement is between EXTTI, Incorporated and the City of Montclair (hereinafter "the Client"). EXTTI is being retained to provide limited legal services in the form of expert review, training and workplace investigations.

A. AGREEMENT AS TO EXPERT REVIEW SERVICES

It is agreed to that in the event EXTTI is asked to perform expert review services, that any such engagements are subject to specific conflict clearance and EXTTI availability.

B. AGREEMENT AS TO TRAINING SERVICES

It is agreed to that in the event EXTTI is asked to perform training services, that said services shall include consultation with Client, the preparation of presentation materials, travel time, and actual presentation time on dates agreed to by the Client and EXTTI.

C. AGREEMENT AS TO INVESTIGATIVE SERVICES

It is agreed that in the event that EXTTI is asked to conduct a privileged and impartial, independent investigation into matters related to the Client's employees. These services would be provided to facilitate the rendering of legal advice by the Client's in-house or outside counsel. In this circumstance, EXTTI personnel are not being hired, and will not serve as advocates for the Client.

The Client shall only use the results of the investigation for proper and lawful purposes. The Client shall comply with all applicable laws. These include all labor and employment laws; investigative reporting laws (including the Investigative Consumer Reporting Agencies Act (ICRA)); and Fair Credit Reporting Act (FCRA); and all applicable laws relating to data privacy (including with respect to requests for data made by EXTTI personnel). Further, Client understands the obligation to implement Electronically Stored Information (ESI) preservation procedures if litigation is anticipated, which might exist by virtue of the issues within the scope of this investigation.

It is agreed that EXTTI is also engaged to conduct a workplace investigation (hereinafter "an Investigation"), it is understood that said retention is subject to the following terms:

1. That the purpose of the Investigation is to attempt to make factual determinations concerning the allegations made by Client's staff. Such an investigation will be conducted by EXTTI personnel. EXTTI and its personnel are being retained as independent contractors and not as employees of the Client.

2. In order to conduct the investigation, EXTTI will be provided access to the Client's employees. In addition, EXTTI will be given access to documents relevant to the investigation requested by its personnel—subject to the Client's obligation to maintain the privacy of employee records. The Client also will provide a copy of its relevant personnel policies.
3. EXTTI personnel will conduct those interviews which they deem appropriate according to the needs of the Investigation. The individual or individuals who raised the allegations will be interviewed (assuming they are willing to be interviewed) so that they may be given a full opportunity to raise their allegations. The individual or individuals who are alleged to have committed the actions will be given a fair opportunity to respond to the allegations against them.
4. During the course of any Investigation, EXTTI will report to Diane Robbins, Esq. Upon completion of the Investigation, EXTTI will provide an oral report of the results of the Investigation. Said oral report will concern EXTTI's factual findings. A written report will be provided, upon request.
5. Other professionals at EXTTI may be used to provide support for the investigation. The fees for their work is outlined on Attachment "A."
6. If translation or private investigative services are needed and if EXTTI retains the translator or private investigator (as opposed to the Client retaining them), EXTTI will be reimbursed its actual cost for those services only. In addition to the above, EXTTI will be reimbursed for reasonable out-of-pocket expenses incurred during the investigation including mileage, photo copying, messenger or Federal Express charges, etc. A detailed listing of costs and fees will be submitted on a monthly basis and will be paid in full by the Client within thirty days of receipt. Should the Client have a question and/or concern about the invoice, Client agrees to raise it for discussion timely and in writing within 10 business days of the date of the invoice.
7. Given the sensitive nature of an investigation, it is understood that EXTTI personnel will not disclose to anyone (outside of EXTTI) any facts relating to the investigation—except: (1) to the Client's representative (delineated in paragraph 4 above), to any other designated representatives of the Client, or to anyone else as authorized by the Client; (2) to others involved in the investigation--but only to the extent necessary to conduct the investigation; (3) to others as required by law.
8. EXTTI personnel must be able to seek out and support their conclusions without concern about being possible defendants in a lawsuit. Accordingly, if as a result of services performed or findings made by any EXTTI personnel relating to the investigation, EXTTI or its personnel (whether employees or independent contractors of EXTTI) are named as defendants (or respondents, charged parties, or parties of any sort) in any legal action, the Client will provide a defense at its expense through its legal counsel or, at EXTTI's discretion, will provide **reimbursement** for legal counsel chosen by EXTTI. The Client also will indemnify and hold EXTTI and its personnel (whether employees or independent contractors) harmless with respect to any judgment entered against them or any settlement Agreement (approved in advance by the Client) that is entered into. This paragraph does not apply to any allegations brought by the Client, against EXTTI or its personnel.

9. If there is a proceeding, in which testimony of EXTTI personnel is required, said personnel will provide complete and truthful testimony.
10. If EXTTI personnel are required to give testimony in any proceeding because of training or investigative services rendered under the Agreement, EXTTI personnel will be paid at the rates delineated in Attachment "A," both to prepare for such testimony and to testify. If testimony is required, EXTTI retains the right to hire legal counsel with respect to any services relating to such testimony. The Client will be responsible for payment of such legal counsel at that counsel's usual and customary rate but in no event greater than 90% of the rate the Client is paying for the senior-most counsel involved in representing the Client in the matter in which the testimony of EXTTI personnel is required.
11. EXTTI hereby advises Client that EXTTI carries a current insurance policy for errors and omissions insurance coverage.
12. The relationship between EXTTI and the Client will end once a final report is delivered. If testimony is required, the relationship will be in effect again--until such testimony has been completed.

D. AGREEMENT AS TO ALL SERVICES

Should any dispute arise between the parties hereto, it will be resolved through **binding arbitration** in accordance with the JAMS Comprehensive Arbitration Rules and Procedures. The arbitrator shall have the power to determine arbitrability. Any arbitration proceedings will be filed and heard in San Bernardino, California. The prevailing party shall be entitled to costs and reasonable attorney's fees.

If any provision of this Agreement is deemed unenforceable, the remaining provisions will be given full force and effect.

This Agreement will be governed by and construed, interpreted, applied, and enforced according to the laws of California, including California law relating to choice of law.

This Agreement may be signed in sub-parts and may be transmitted by email and/or telecopy.

This Agreement constitutes the entire agreement between the parties relating to the subject matters set forth herein. It only may be modified by a written agreement, signed by an Agent of EXTTI and the Client.

For EXTTI, Incorporated: (Tax ID 95-4685649)

Dated: July 28, 2021

Michael A. Robbins, Esq.
President

For the Client:

Print Name: _____

Dated: _____

Title: _____

EXHIBIT A
FEE SCHEDULE

EXPERT TESTIMONY, if engaged

Michael Robbins	\$600.00 per hour
Scott Braer	\$500.00 per hour

INVESTIGATIVE SERVICES

Donna Evans	\$350.00 per hour
Samantha Blake	\$350.00 per hour
Julie Yannow	\$350.00 per hour
Alison Underwood	\$300.00 per hour
Hayden Adams	\$275.00 per hour

TRAINING SERVICES

Half-day	\$2,000.00
Full-day	\$3,500.00



CITY COUNCIL AGENDA REPORT

DATE:	AUGUST 2, 2021	FILE I.D.:	LDU325
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	4	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF REIMBURSEMENT AGREEMENT NOS. 21-52 AND 21-53 WITH MAPLE MULTIFAMILY LAND CA, L.P. RELATED TO THE PROPERTIES GENERALLY LOCATED ON THE SOUTHWEST CORNER OF MONTE VISTA AVENUE AND ARROW HIGHWAY (ALEXAN-KENDRY EXPANSION PROJECT SITE); AND THE NORTHWEST CORNER OF MONTE VISTA AVENUE AND RICHTON STREET (VULCAN PROJECT SITE)		

REASON FOR CONSIDERATION: The North Montclair Downtown Specific Plan (NMDSP) calls for architectural review of all proposed development projects within the boundaries of the specific plan by the City's architectural and land use consultant. In addition, all proposed development projects within the boundaries of the NMDSP require that developers enter into a reimbursement agreement with the City pertaining to peer, legal, and environmental review.

The implementation efforts within the NMDSP area are seen as a method to ensure new development has a limited negative impact on the City's General Fund and has aesthetics that enhance quality of life in the community.

Staff was recently approached by Maple Multi Family Land CA, L.P., (Trammel Crow Residential) regarding pursuing entitlements for two multifamily residential projects in North Montclair. The first project is located at the southwest corner of Monte Vista Avenue and Arrow Highway (Alexan-Kendry Expansion Site) and the second project is located at the northwest corner of Monte Vista Avenue and Richton Street (Vulcan Site).

In order to contemplate development of the proposed two multifamily residential projects pursuant to the standards set in the NMDSP, the projects will need to comply with the specific plan and require related compliance review.

A copy of proposed Agreement Nos. 21-52 and 21-53 are attached for City Council review and consideration.

BACKGROUND: Trammel Crow Residential is considering the purchase of certain real properties located within the City. The properties consist of an area of approximately 2.22 gross acres in size located on the southwest corner of Monte Vista Avenue and Arrow Highway, Montclair, California 91763 (Alexan-Kendry Expansion Site) and an area of approximately 9.68 gross acres in size located at the northwest corner of Monte Vista Avenue and Richton Street, Montclair, California 91763 (Vulcan Site).

The properties are located within the boundaries of the NMDSP approved by the City Council on May 15, 2006 pursuant to Resolution No. 06-2628 and amended by the City Council on March 20, 2017 pursuant to Resolution No. 17-3149. Trammel Crow Residential is contemplating the development of the two properties and would like to develop the sites in accordance with the provisions of the NMDSP. The projects will consist of construction of approximately 135 residential units at the Alexan-Kendry Expansion Site and 300 residential units at the Vulcan Site.

Trammel Crow Residential has agreed to enter into two reimbursement agreements with the City for costs and expenses related to environmental review by Dudek, legal advice and review by Best Best & Krieger (BBK), formation of a communities facilities district (CFD) by David Taussig & Associates Inc.(DTA), and planning and architectural review by Moule & Polyzoides. Proposed Agreement No. 21-52 would provide for reimbursement to the City of costs associated with the Alexan-Kendry Expansion Site and proposed Agreement No. 21-53 would provide for reimbursement to the City of costs associated with the Vulcan Site.

The developer's reimbursements to the City under proposed Agreement Nos. 21-52 and 53 will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the developer's projects.

In order for Trammel Crow Residential to begin utilizing the services of the City's consultants Dudek, BBK, DTA, and Moule & Polyzoides; it is necessary for the City to enter into reimbursement agreements with the developer.

Proposed Agreement Nos. 21-52 and 21-53 contain the terms of the developer's reimbursement of certain City-incurred costs associated with environmental review, legal advice and review, formation of CFDs, and architectural and design review of the proposed projects as well as scope of work to be completed by the City's consultants. A synopsis of the proposed agreements include the following points:

- The consultants would be contractors exclusively of the City and not of the developer. The work product produced by the consultants, subject to financial reimbursement by the developer, would be photocopied for information to the developers, unless that work would be considered privileged or confidential under law.
- The City will retain the services of Dudek to prepare documentation in compliance with California Environmental Quality Act (CEQA). Dudek proposes to prepare an Initial Study/Environmental Checklist (IS/Checklist) tiering from the NMDSP Amendment Project Supplemental Environmental Impact Report (SEIR) (State Clearinghouse No. 2016101001) that was certified by the City in 2017. The IS/Checklist will determine whether the current projects will result in any new or substantially more severe environmental impacts compared to that evaluated in the SEIR. Dudek anticipates that none of the conditions described in State CEQA Guidelines Section 15162 or 15163 calling for preparation of a supplemental or subsequent EIR will occur and that an Addendum should suffice. The estimated total costs associated with the environmental reviews are approximately \$34,260 for each project.
- The City will retain the services of BBK to provide legal services related to (1) documents, advice, and review for creation of CFDs; (2) provide documents, advice and review regarding the development process for the proposed projects, including compliance with the CEQA; and, (3) advice and/or review of Operating Agreements, Covenants, Conditions and Restrictions, Parking Management Agreements and/or other documents that may be needed for the projects. The estimated total costs associated with legal review and advice are approximately \$75,000 for each project.

- The City will retain the services of DTA related to the formation of CFDs to finance certain annual services related to maintenance costs and public safety costs and provide administrative overview for the projects. The estimated total costs associated with formation of the CFDs are approximately \$26,000 for each project.
- The City will retain the services of Moule & Polyzoides for architectural and design review. Moule & Polyzoides will review the site plan submitted for conformance with the NMDSP and prepare a conceptual parti-sketch that conveys the intent of the NMDSP and the City's expectations. Moule & Polyzoides will also participate in a meeting with Trammell Crow Residential and their architect to provide feedback and suggestions. Moule & Polyzoides will share the design suggestions with City staff for input and to confirm the proposed design direction. Moule & Polyzoides will review the follow-up site plan and meet with Trammell Crow and their architect to provide comments and final direction. The estimated total costs associated with the architectural and design review are approximately \$12,000 for each project.
- The City would not exceed the estimated \$148,000 of costs for each project without first informing the developer in writing regarding the need for additional services. The City would be required to provide the developer with appropriate documentation of the reason for the excess costs so the developer may reasonably evaluate such costs. The City would also be required to inform the developer in writing prior to amending the scope of work to be conducted by the consultant. Once the City has provided such notice to the developer, the developer would be obligated to pay the excess cost in the same manner as the estimated costs. However, if the developer objects to the excess costs, the developer must provide the City with a written objection no later than five days after receipt of the City's written notice. The City and developer would communicate in an attempt to resolve the objection. If the parties are unable to resolve the objection, the developer will have the sole and exclusive right to terminate the agreement and reimburse the City for all costs incurred to the date of termination.
- The City would be required to maintain accurate records of invoices received from, and payments made to, the consultants. The City would be required to provide a payment summary to the developer within a reasonable time upon request.
- The term of the Agreements would commence on August 2, 2021 and would terminate once all services required for the projects by the consultants have been completed to the City's reasonable satisfaction. The developer's obligation to reimburse the City would survive the termination of the Agreements.
- The City would be able to terminate the Agreements prior to the terms set forth above, without cost or liability, upon 30 days' written notice to the developer in the event the developer fails to satisfy any material obligation of the agreement or fails to prosecute its applications for the project. The developer would be able to terminate the Agreements upon 30 days' prior written notice provided that the developer gives the City written notice withdrawing its application for the project and the developer would be obligated to satisfy all of its obligations under the Agreements through the effective date of the termination.

- The Agreements would not be assignable by either party without the prior written consent of the other party.

FISCAL IMPACT: Through proposed Agreement Nos. 21-52 and 21-53, the developer would be required to pay all costs associated with environmental review by Dudek, legal advice and review by BBK, formation of a CFD with the assistance of DTA, and planning and architectural review by Moule & Polyzoides. The estimated total cost of the reimbursement by the developer for the Alexan-Kendry Expansion Site (\$148,000) and Vulcan Site (\$148,000) would be \$296,000. A breakdown of the costs is shown as follows:

<u>Reimbursement Agreements</u>	<u>Fees</u>	<u>Total</u>
Agreement No. 21-52		
Alexan Kendry Expansion Site.....		\$147,260.00
	Dudek: \$34,260	
	BBK: \$75,000	
	DTA: \$26,000	
	M&P: \$12,000	
Agreement No. 21-53		
Vulcan Site.....		\$147,260.00
	Dudek: \$34,260	
	BBK: \$75,000	
	DTA: \$26,000	
	M&P: \$12,000	
Estimated Total Fees.....		\$294,520.00

It should be noted that the implementation efforts within the NMDSP area are seen as a method to ensure new development has a limited negative impact on the City's General Fund and has aesthetics that positively enhance quality of life issues in the community.

RECOMMENDATION: Staff recommends the City Council approve Reimbursement Agreement Nos. 21-52 and 21-53 with Maple Multifamily Land CA, L.P. related to the properties generally located on the southwest corner of Monte Vista Avenue and Arrow Highway (Alexan-Kendry Expansion Project Site); and the northwest corner of Monte Vista Avenue and Richton Street (Vulcan Project Site).

AGREEMENT NO. 21-52

A REIMBURSEMENT AGREEMENT

Between

**CITY OF MONTCLAIR
a California Municipal Corporation**

and

**Kendry II Apartments Owner, L.L.C.,
a Delaware limited liability company**

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 2nd day of August, 2021, by and between the CITY OF MONTCLAIR, a California Municipal Corporation (the "City"), and Kendry II Apartments Owner, L.L.C., a Delaware limited partnership (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Montclair, County of San Bernardino, California. The Property is more particularly described as an area of approximately 2.13 gross acres in size and is located on the southwest corner of Monte Vista Ave. and Arrow Highway, Montclair, CA. The Property is further described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Property is located within the boundaries of the North Montclair Downtown Specific Plan approved by the City Council on May 15, 2006 by Resolution No. 06-2628 and amended by the City Council on March 20, 2017 by Resolution No. 17-3149 ("Specific Plan"). The Applicant is contemplating the development of the Property and would like to develop the site in accordance with the provisions of the North Montclair Downtown Specific Plan ("the Project"). The project will consist of construction of approximately 137 residential units.

C. In order to contemplate development of the proposed project pursuant to the standards in the North Montclair Downtown Specific Plan, the Project will need to comply with the specific plan and require related compliance review. The review of compliance to the Specific Plan shall be referred to collectively as the "Project."

D. To provide the City with the needed expertise and information necessary for the City's approval of a Precise Plan of Design, preparation of a Maintenance & Operations Regulatory Agreement and establishment of Community Facilities District concerning the Project, it is or may become necessary for the City to access the services of certain outside planning, architecture, legal, financial, and other experts for the Project ("Consultants").

E. The Applicant has agreed to reimburse the City for Consultant's costs and expenses related to the Applicant's Project in the manner and amounts set forth in this Agreement. The Applicant's reimbursement to City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the Applicant's Project.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of the Conditions of Approval of Applicant's proposed Project and use of the Property, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project are attached hereto as Exhibit "B" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicant thereof in writing (and in no event, less than five (5) business days after the City becomes aware of such information).

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicant shall be provided with photocopies of all such documents or work product for which it has reimbursed the City which are not so privileged or confidential under law.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City proposes to retain the following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement: (1) Dudek (Environmental), (2) Best Best Kreiger, Attorneys at Law (BBK) (legal advisors on environmental and Community Facilities District), (3) David Taussig & Associates (Community Facilities District), and (4) Moule & Polyzoides, Urbanists and Architects (Land Use Consultants-related to applicants Project only). If and when the City determines to retain such additional consultants or subconsultants, it shall first so inform the Applicant of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicant shall have five (5) business days in which to review and approve or disapprove the retention of such parties (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval as to the retention of any such parties on or prior to the expiration of such five (5) business day period, the City may thereafter retain such parties upon the terms and conditions submitted to the Applicant. In the event that the Applicant reasonably objects to any such retention, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City the actual fees, costs and other expenditures incurred by the City relative to the Consultants costs ("Costs") related to the Applicant's Project, subject to the terms and conditions of this Agreement. Applicant further understands and agrees that Costs are based upon the rates provided by Consultants attached hereto as Exhibit "C" to this Agreement.

The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all consultants to be approximately One Hundred Forty Eight Thousand Dollars (\$148,000) ("Estimated Costs"). Upon the execution of this Agreement and before August 31, 2021, the Applicant shall submit a deposit in the amount of Fifty Thousand (\$50,000) as the initial amount to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

At any time that the Deposit Account drops below Twenty Thousand Dollars (\$20,000), the City may make written demand on Applicant to replenish the Deposit Account to Fifty Thousand Dollars (\$50,000), and Applicant shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event

Applicant fails to make any required deposit, City shall so notify Applicant in writing and Applicant shall have ten (10) additional calendar days to replenish the Deposit Account. Thereafter, City shall have the right to consider Applicant's Project applications as withdrawn and cease processing such applications.

The City shall not exceed the Estimated Costs without first informing the Applicant in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs") and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicant shall be able to reasonably evaluate such costs. Notwithstanding anything herein to the contrary, the City shall not incur Excess Costs without the express prior written consent of Applicant. The City shall also inform the Applicant in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail that the Applicant shall be able to reasonably evaluate such amended scope, and approve or disapprove the same, in writing. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by Consultants and the estimated cost thereof as described hereinabove prior to the commencement of work and Applicant's approval thereof, as herein provided. Once the City provides such notice and obtains such approval, then Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above; provided, however, in the event that the Applicant reasonably disapproves any Excess Costs, the Applicant shall provide the City with a written objection not later than five (5) business days after receipt of the City's written notice stating the reasons for its disapproval in sufficient detail that the City shall be able to address. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such disapproval) communicate in order to resolve any such objection, but if the parties are unable to resolve such disapproval, and if the City thereafter pays any disputed Excess Costs, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to Consultant. Upon such termination by the Applicant, the City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City agrees to refund that excess amount, if any, to Applicant within fifteen (15) calendar days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and conditions of this Agreement, Applicant shall remain obligated to pay for all such Costs. Applicant shall pay any such amount within ten (10) calendar days of written demand for payment by City.

6. Conditions of Approval. Applicant and City understand and agree that Applicants' land use entitlements concerning the Property are subject to the Conditions of Approval granted by the Planning Commission and City Council and entering into said Reimbursement Agreement will aid the Applicant in satisfying certain Conditions of Approval of Applicant's proposed project.

7. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination, which accrue prior to the date of termination. The Applicant's obligation to reimburse (Section 5) the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 8.

8. Early Termination.

8.1 By City. The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 6 above, without cost or liability to the City, upon thirty (30) days' prior written notice to the Applicant in the event that Applicant either: (1) fails to satisfy any material obligation of this Agreement (provided, however, if such failure is capable of being timely remedied without prejudice to the City, and is timely remedied by the Applicant, such failure shall be deemed to be waived); or (2) materially fails to reasonably prosecute its application(s) for the Project. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

8.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination.

Within two (2) working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination. Upon such termination by the Applicant, the

City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld; provided, however, Applicant shall have the right to assign the Agreement to any entity that assumes ownership of the Property and in which Applicant or an affiliate thereof has an ownership interest. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third-party action or proceeding; provided, however, the Applicant may, at any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorneys' fees and expert or other costs.

AGREEMENT NO 21-52

It is acknowledged by the parties that City is entering into this Agreement to assist Applicant in processing the Project. Applicant understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Applicant understands and agrees that City shall not be liable for damages to Applicant or any successor for breach of this Agreement or for any cause of action that arises from this Agreement, except to the extent of any amounts in the Deposit Account that remain unencumbered and shall be refunded to Applicant. Applicant's remedies shall be limited to termination of this Agreement, subject to the obligations contained in Section 8.2.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of San Bernardino, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to City:

Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763
Fax: 909-621-1584

If to the Applicant:

Alec Schiffer
Maple Multi-Family Development
5790 Fleet St. Suite 140
Carlsbad, CA 92008
aschiffer@tcr.com

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

CITY OF MONTCLAIR
a California Municipal Corporation

By: _____
Javier John Dutrey, Mayor

ATTEST:

By: _____
Andrea M. Myrick, City Clerk

APPROVED AS TO FORM:

By: _____
Diane E. Robbins, City Attorney

Kendry II Apartments Owner, L.L.C., a Delaware limited liability company

By: Kendry II Apartments Venture, L.P., a Delaware limited partnership, its sole member

By: CCH 118 Montclair Arrow Addition, L.P., a Delaware limited partnership, its general partner

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company, its general partner

By: _____
Alec Schiffer, Vice President

ATTEST:

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MONTCLAIR, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:
PARCEL 1:

PARCEL C AS SHOWN ON CERTIFICATE APPROVING A LOT LINE ADJUSTMENT NO. 83-1, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 22, 1983 AS INSTRUMENT NO. 83-302330 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT 6, CLAREMONT ORANGE TRACT, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17, PAGE 87 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH 80 FEET OF THE NORTH 315 FEET OF SAID LOT 6, SAID POINT BEING ON THE CENTERLINE OF MONTE VISTA AVENUE, THENCE WEST ALONG THE NORTH LINE OF SAID SOUTH 80 FEET TO THE EAST LINE OF THE WEST HALF OF SAID LOT 6; THENCE CONTINUING WEST ALONG SAID NORTH LINE AND PARALLEL TO THE CENTERLINE OF ARROW HIGHWAY (FORMERLY CUCAMONGA AVENUE) 66.21 FEET; THENCE SOUTH PARALLEL TO SAID EAST LINE TO THE NORTH LINE OF THE SOUTH 370 FEET OF SAID LOT 6; THENCE EAST ALONG SAID NORTH LINE 66.21 FEET TO THE SAID EAST LINE OF THE WEST HALF; THENCE SOUTH ALONG SAID EAST LINE TO THE SOUTH LINE OF SAID NORTH 315 FEET; THENCE EAST ALONG SAID SOUTH LINE TO SAID CENTERLINE OF MONTE VISTA AVENUE; THENCE NORTH ALONG SAID CENTERLINE OF MONTE VISTA AVENUE TO THE POINT OF BEGINNING.

AREAS AND DISTANCES ARE COMPUTED TO THE CENTERLINE OF ALL ADJOINING STREETS AND ROADS AS SHOWN ON SAID MAP.

PARCEL 2:

PARCEL 1 AS SHOWN ON CERTIFICATE APPROVING A LOT LINE ADJUSTMENT NO. 2003-2, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO. 2003-0936556 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE NORTH 315.00 FEET OF THE EAST ONE-HALF OF LOT 6, CLAREMONT ORANGE TRACT, AS PER MAP RECORDED IN BOOK 17, PAGE 87 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

TOGETHER WITH THAT PORTION OF THE WEST 5.00 FEET OF MONTE VISTA AVENUE AS VACATED BY RESOLUTION OF THE COUNTY SURVEYOR, A CERTIFIED COPY OF WHICH WAS RECORDED APRIL 9, 1917 IN BOOK Z, PAGE 352 OF MISCELLANEOUS RECORDS, WHICH WOULD NORMALLY PASS BY OPERATION OF LAW WITH A LEGAL CONVEYANCE OF SAID LAND.

EXCEPT THE SOUTH 80.00 FEET THEREOF. ALSO EXCEPTING THE WEST 20 FEET THEREOF.

PARCEL 3:

PARCEL 2 AS SHOWN ON CERTIFICATE APPROVING A LOT LINE ADJUSTMENT NO. 2003-2, AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 19, 2003 AS INSTRUMENT NO. 2003-0936556 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST HALF OF LOT 6, CLAREMONT ORANGE TRACT, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK

17, PAGE(S) 87 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE WEST HALF OF SAID LOT 6, SAID POINT BEING ON THE CENTER LINE OF ARROW HIGHWAY (FORMERLY CUCAMONGA AVENUE); THENCE SOUTH ALONG THE EAST LINE OF SAID WEST HALF TO THE NORTH LINE OF THE SOUTH 80 FEET OF THE NORTH 315 FEET OF SAID LOT 6; THENCE WEST ALONG SAID NORTH LINE AND PARALLEL TO SAID CENTERLINE, 66.21 FEET; THENCE NORTH PARALLEL TO THE SAID EAST LINE TO THE SAID CENTERLINE OF ARROW HIGHWAY; THENCE EAST ALONG SAID CENTERLINE TO THE POINT OF BEGINNING.

ALSO THE WEST 20 FEET OF THE NORTH 235.00 FEET OF THE EAST ONE HALF OF PARCEL 6, CLAREMONT ORANGE TRACT AS PER MAP RECORDED IN BOOK 17, PAGE 87 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

AREAS AND DISTANCES ARE COMPUTED TO THE CENTERLINE OF ALL ADJOINING STREETS AND ROADS AS SHOWN ON SAID MAP.

APNs:

- 1009-021-21-0-000 (Affects Parcel 1)
- 1009-021-22-0-000 (Affects Parcel 2)
- 1009-021-23-0-000 (Affects portion of Parcel 3)
- 1009-021-24-0-000 (Affects portion of Parcel 3)

EXHIBIT "B"
SCOPE OF SERVICE FOR CONSULTANTS

DUDEK

Services related to environmental evaluation under CEQA.

BEST BEST & KREIGER Attorneys at Law (BBK)

BBK will provide legal services related to (1) documents, advice, and review for a Community Facilities District; (2) provide documents, advice and review regarding the development process for the proposed Trammel Crow Residential – Vulcan Site Project, including compliance with the California Environmental Quality Act; and, (3) advice and/or review of Operating Agreements, Covenants, Conditions and Restrictions, Parking Management Agreements and/or other documents that may be needed or required for the project.

DAVID TAUSSIG & ASSOCIATES

Services related to formation of the rate and method and implementation of a Community Facilities District

MOULE & POLYZOIDES

Services related to design and architectural review of the project proposed by Maple Multi Family Land CA, L.P.

EXHIBIT "C"
BILLING FOR EACH CONSULTANT

June 12, 2021

Mikey D. Fuentes
City of Montclair
5111 Benito St
Montclair, CA 91763

Subject: Proposal to Prepare Environmental Evaluation under the California Environmental Quality Act for the Alexan Kendry Apartment Complex Expansion Project

Dear Mr. Fuentes:

Thank you for inviting Dudek to submit a proposal to prepare documentation in compliance with California Environmental Quality Act (CEQA) for a proposed Alexan Kendry Apartment Complex Expansion Project (proposed project) by Trammel Crow Residential Company (Applicant).

Alexan Kendry Apartment Complex Expansion Project

The City of Montclair (City) is the CEQA lead agency for the proposed project to be constructed by the Applicant. The proposed project would develop four parcels (Assessor's Parcel Numbers 100902121, 100902122, 100902123 and 100902124) on a 2.13-acre site located in the North Montclair Downtown Specific Plan area in Montclair, California. The development would expand the existing Alexan Kendry Apartment Complex that is located to south and west of the proposed project site. The new development would include the construction of 137 residential units and a 1-story, partially submerged parking garage.

Dudek proposes to prepare an Initial Study/Environmental Checklist (IS/Checklist) tiering from the North Montclair Downtown Specific Plan Amendment Project Supplemental Environmental Impact Report (SEIR) (State Clearinghouse No. 2016101001) that was certified by the City in 2017. The IS/Checklist will determine whether the current application would result in any new or substantially more severe environmental impacts compared to that evaluated in the SEIR. The results of the IS/Checklist will assist the City in determining what level of environmental document is appropriate for consideration of project approval.

The following scope of work assumes that after reviewing the IS/Checklist the City will determine that none of the conditions described in State CEQA Guidelines Section 15162 or 15163 calling for preparation of a supplemental or subsequent EIR have occurred. Therefore, an Addendum to the 2017 SEIR should be prepared for the proposed project. If the City determines through the checklist review process that the proposed project would result in new or substantially more severe

Mr. Mikey D. Fuentes

Subject: Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal

significant environmental impacts resulting from changes in the project or circumstances, or from new information of substantial importance as defined in the CEQA Guidelines, then Dudek would provide the City with a scope of work for the preparation of a Mitigated Negative Declaration (MND) or supplement to or subsequent EIR.

The following captures the tasks necessary to prepare an Addendum to the 2017 SEIR. Dudek proposes that Candice Disney Magnus be the Dudek Project Manager for the following tasks.

SCOPE OF WORK

Task 1: Project Initiation and Materials Review

Dudek will review all relevant project materials including the project application, available technical studies, background information, and other applicable regulations. The Dudek project manager will attend a kick-off meeting with City staff that will provide Dudek an opportunity to inquire further about the project and receive applicable background documents. Dudek will review information provided for the project and will notify the City of any requests for additional information needed to prepare the IS/Checklist via an Information Request List.

Deliverables: Information Request List

Task 2: Develop Project Description

Once responses to the Information Request List are received, Dudek will work with the Applicant team to prepare a detailed description of the proposed project and if it is consistent with what was evaluated in the 2017 SEIR. This description will combine text, tables, and figures to create a comprehensive, yet easy to understand project description. The project description will be prepared in accordance with CEQA Guidelines, Section 15124, and will describe the basic characteristics of the project, including site location and boundaries, background information, technical and environmental characteristics, project size, project construction methodologies and project operation. Accompanying the project description will be a list of the anticipated responsible and trustee agencies, as well as necessary discretionary actions including permits, characterized by jurisdiction.

Dudek will submit the draft updated project description to the City and the Applicant team for review and will revise accordingly before finalizing the project description.

Deliverables: Draft Project Description (in Word and PDF), and Final Project Description (in Word and PDF).

Mr. Mikey D. Fuentes

Subject: Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal

Task 3: Prepare Environmental Checklist/Technical Analysis

The Dudek team will prepare a Draft Project-Specific IS/Checklist for the proposed project. The Addendum will use the information and technical studies prepared for the SEIR to provide a project-level review of whether the proposed project is consistent with the programmed growth identified in the 2017 SEIR. The Addendum will also document whether the land use and development associated with the proposed project is consistent with the objectives, land use designations, and development and population forecasts as analyzed in the 2017 SEIR. To determine whether the proposed Project is sufficiently addressed by the 2017 SEIR, Dudek will evaluate the following questions:

- Are the objectives of the proposed project consistent with the objectives of the 2017 SEIR?
- Are the changes to the North Montclair Downtown Specific Plan area associated with the proposed project included within the scope of the 2017 SEIR projections?
- Is the proposed location of the project site in an area designated for this type of use in the 2017 SEIR?
- Are the proposed project activities within the scope of the environmental analysis in the 2017 SEIR?
- Have the conditions described in the CEQA Guidelines 15162 for the preparation of a supplemental or subsequent EIR occurred?

The Initial Study will also include an evaluation that would determine if any of the environmental resource areas on the CEQA Guidelines Appendix G would be potentially affected by the proposed project or would involve any significant impacts that substantially exceed development or activities evaluated for potential environmental impacts in the 2017 SEIR. This scope of work assumes that the proposed project will be deemed entirely consistent with and covered by the environmental analysis contained in the 2017 SEIR. The evaluation of consistency with the 2017 SEIR analysis will include the full range of environmental topics reflected in CEQA Appendix G. The IS/Checklist will assess the following points for each environmental topic in Appendix G:

- Was the impact analyzed in the prior environmental document? (If so, where.)
- Do proposed changes involve new significant impacts or substantially more severe impacts?
- Are there new circumstances involving new significant impacts or substantially more severe impacts?

Mr. Mikey D. Fuentes

Subject: Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal

- Is there any significant new information requiring new analysis or verification?
- Are only technical changes or additions needed to make the prior environmental document sufficient for the project?
- Do mitigation measures from the prior environmental document resolve significant impacts?

The checklist will address all environmental topic areas and will describe existing conditions, assess potential environmental impacts, and recommend feasible mitigation measures if necessary. The level of analysis and degree of impact will vary depending upon the environmental topic but will be sufficient to provide the substantial evidence to support the conclusions, consistent with CEQA requirements and prior legal direction from the courts. All issue areas included in Appendix G of the State CEQA Guidelines will be addressed, with emphasis on those issues with potential for significant effects, particularly construction related effects to air quality/greenhouse gas emissions, biological resources, noise, and transportation. The analysis will consider differences between the certified 2017 SEIR along with changes in circumstances that may alter conclusions about significant environmental effects, including cumulative impacts and regulatory changes. If data gaps are identified, the checklist results will also include a list of data that needs to be supplemented for an adequate environmental analysis.

Dudek is assuming that information for this analysis will be gathered from the technical studies prepared for the 2017 SEIR, technical studies provided by the Applicant and various sources typically used in CEQA analysis. Thus, this scope of work assumes that no new technical studies will be prepared by Dudek. Dudek is assuming the technical studies to be supplied by the Applicant team will include a project specific drainage report and any necessary drainage exhibits that will document proposed improvements. Dudek assumes that our water quality and hydrology experts will review these studies but will not be asked to perform or update drainage calculations, runoff quantities, etc. Dudek is also assuming that the Applicant team will prepare a project specific noise analysis, a Phase 1 hazardous assessment and a geotechnical analysis that will document any potential construction and operational noise, hazardous and geotechnical impacts for the proposed project. Dudek's technical specialists will review these analyses while preparing the noise, hazardous and geotechnical sections of the IS/Checklist but we are assuming Dudek will not be asked to produce any additional analysis. If these assumptions are not correct, Dudek can provide a scope of work and cost for any needed technical studies.

Once all technical information is collected and analyzed, Dudek will submit the draft IS/Checklist to the City and the Applicant team for review and will revise accordingly before finalizing the IS/Checklist.

Deliverables: Draft IS/Checklist (in Word and PDF), and Final IS/Checklist (in Word and PDF).

Mr. Mikey D. Fuentes

Subject: Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal

Task 4 – Preparation of an Addendum to the 2017 EIR

Once the City makes the formal determination that an Addendum is the appropriate environmental document, Dudek will prepare the Addendum documentation pursuant to CEQA Guidelines section 15162. The Addendum will package the information and analyses from the IS/Checklist with an introduction discussing what triggered the Addendum, a summary of the previous environmental analyses included in the 2017 SEIR and requirements for CEQA review after an EIR has been certified.

Guidance and review of the Addendum and the administrative record will be undertaken in close coordination with City planning and legal staff. One round of review of the Draft Addendum is included in this task. Dudek will maintain a tracking sheet identifying the status of any comments made on the Addendum as it progresses from preparation through District staff and legal review and will produce the Final Addendum once all comments are addressed.

Deliverables: Draft Screencheck Addendum (in Word and PDF), Final Addendum (in Word and PDF) and tracking matrix.

Task 5: Project Coordination

Dudek's Project Manager will actively manage the tasks identified in Tasks 1 and 4 of this proposal. The Project Manager will include regular communications with City staff and the Applicant team by either phone, email or in person, throughout our work effort. Management tasks will also include tracking costs and schedule. Dudek will provide the City with a master schedule for Tasks 1 and 4 above and will provide the City with a monthly status report documenting the work performed during the prior month and the work expected to be completed in the next month.

Deliverables: Invoices, monthly progress reports, master schedule

Task 4: Project Meetings

Dudek anticipates that bi-weekly team meetings will be arranged with the City and Applicant team over a six-month period. These meetings will allow the team to discuss our progress and implications of the environmental analysis. For cost estimating purposes, Dudek has included 12 bi-weekly meetings (either conference calls or in-person) during the six-month period averaging two hours for preparation and participation. Dudek will also assist the City planner with sharing the Addendum with meetings for City management or leadership as requested.

Mr. Mikey D. Fuentes

Subject: Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal

Deliverables: Project file (electronic and paper versions), team meeting agendas and notes, meeting summaries, project schedule, FTP sites

Additional Assumptions

Assumptions for this scope of work include the following:

- Once preparation of the first administrative versions of the Draft Addendum have begun, no changes to the updated project will occur, which would result in revisions to the updated project description, report graphics, or re-analysis of any environmental issue.

ESTIMATED SCHEDULE AND COSTS

1. ANTICIPATED PROJECT SCHEDULE

The Dudek team shall perform and complete the required services as agreed to by the City. The anticipated start date is August 15, 2021 and the duration of the schedule for the tasks covered under this Scope of Work is estimated to be approximately 6 months (February 2022). A more detailed schedule may be agreed upon by the City and Dudek and project meeting budgets may need to be adjusted accordingly. The Dudek team will work cooperatively with the City and the Applicant team to complete the tasks in a timely manner. The Dudek Project Manager will keep the City staff informed of the progress of said services at all times.

2. ANTICIPATED ESTIMATED COSTS

This is a Time and Materials Agreement that will be invoiced via hourly rates. The work hours anticipated and estimated cost breakdown for the tasks covered by this Scope of Work is covered in Table 1, Cost Estimate. Costs were calculated based on anticipated hours to be worked and materials needed for this project.

Mr. Mikey D. Fuentes

Subject: *Alexan Kendry Apartment Complex Expansion Project CEQA Document Proposal*

**Table 1.
Cost Estimate**

Tasks	Cost Estimate \$180/hr.
Task 1: Project Initiation and Materials Review	\$2,280
Task 2: Preparation of Updated Project Description	\$7,775
Task 2: Preparation of an Initial Study/Checklist	\$12,985
Task 3: Preparation of Addendum to the 2017 MND	\$2,860
Task 3: Project Coordination	\$3,800
Task 4: Project Meetings	\$4,560
Total	\$34,260

Please do not hesitate to contact me at 760-642-8261 or cmagnus@dudek.com with any questions.

Sincerely,



Candice Disney Magnus
Senior Project Manager



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611
Irvine
(949) 263-2600
Los Angeles
(213) 617-8100
Manhattan Beach
(310) 643-8448
Ontario
(909) 989-8584

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502
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San Diego
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Walnut Creek
(925) 977-3300
Washington, DC
(202) 785-0600

Amy E. Hoyt
(951) 826-8303
Amy.Hoyt@bbklaw.com
File No. 09957.00000

July 13, 2021

VIA E-MAIL TO: MFUENTES@CITYOFMONTCLAIR.ORG

Mikey Fuentes
Senior Management Analyst
City of Montclair
5111 Benito Street
Montclair, CA 91763

Re: Continued Engagement of Best Best & Krieger LLP - Trammel Crow
Residential - Kendry Expansion Site

Dear Mikey:

Best Best & Krieger LLP is pleased to continue to represent the City of Montclair regarding the Trammel Crow Residential – Kendry Expansion Site. Specifically, you have asked us to assist the City and provide legal services related to (1) documents, advice, and review for a Community Facilities District; (2) provide documents, advice and review regarding the development process for the proposed Trammel Crow Residential – Kendry Expansion Site, including compliance with the California Environmental Quality Act; and, (3) advice and/or review of Operating Agreements, Covenants, Conditions and Restrictions, Parking Management Agreements and/or other documents that may be needed or required for the Trammel Crow Residential – Kendry Expansion Site.

Except as to the above scope of our representation in this matter, the terms of our representation are set forth in our original engagement letter subject to the updated fee arrangement. The hourly rates for such services are as follows:

Alisha Winterswyk, Partner	\$530 per hour
Marco Martinez, Partner	\$510 per hour
Mrunal Shah, Partner	\$485 per hour
Monica Castillo, Associate	\$360 per hour

We have checked the following names against our client index: Trammel Crow Residential, Alec Schiffer and Reece Pettersen. Based on the conflict check performed for this matter, it was determined that we have no existing conflicts. Please review the list. If you do not
09957.00000\34200501.1



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mikey Fuentes
July 13, 2021
Page 2

tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

If this letter meets with your approval, please sign and date it, and return it to us. If you have any other questions or concerns about the terms of our representation, please contact me. Thank you for the opportunity to continue to represent the City of Montclair.

Sincerely,

Amy E. Hoyt
of BEST BEST & KRIEGER LLP

AEH:mmc

AGREED AND ACCEPTED:

By: _____

Dated: _____



SCOPE OF WORK

A Phase I

DTA shall provide special tax consulting services, as described in the tasks below, necessary to assist the Client in the formation of a CFD to finance certain annual services for the project known as the Kendry Site expected to encompass 137 residential units.

Task 1 – Initial Kick-off Call

Attend an initial kick-off call to discuss the scope of work, proposed schedule, and to identify any other issues prior to beginning work.

Task 2 – Research

Gather the necessary data from the Client and Developer with the assistance of DTA. The Client and Developer are responsible for providing and verifying data describing types of development, improved property values, net taxable acreage, and the estimated cost of the annual services proposed to be financed. DTA shall rely on such data provided by the Client and Developer, and shall not be responsible for verifying its accuracy. DTA shall also compile assessor’s data for the project area.

Task 3 – Preliminary Tax Spread

Prepare initial spread of special taxes (the “Tax Spread”) based on land use, building square footage, and/or acreage as obtained through Task 2 above. Calculate special taxes to support proposed annual services costs. DTA may recommend alternative techniques to apportion special taxes to enhance project feasibility.

Task 4 – Rate and Method of Apportionment

Prepare the Rate and Method of Apportionment of Special Tax (the “RMA”) which describes the methodology used to calculate the annual special tax levy for the CFD. DTA shall work with Client staff to modify the RMA as needed.

Task 5 – Public Report

Prepare the Public Report, as described in Section 53321.5 of the California Government Code, containing descriptions of the proposed services, their estimated costs, and maximum annual special tax rates.

Task 6 – Document Review and Preparation

Assist the Client with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, and related items.

Task – Verbal Consulting Services

Provide verbal consulting services and advice to the Client and other Project Developers regarding the special tax and apportionment methodology during the period in which Tasks 1 through 6 are being completed.



Task 8 – Coordination

DTA shall attend conference calls as needed, including the meeting described in Task 1 above. These calls may be used to discuss or present the Tax Spread, Rate and Method of Apportionment of Special Tax, Public Report, or other items prepared by DTA. They may also be used for the protest hearing, or other public meetings. In-person meetings attended by DTA will require fees beyond the maximum established in the Fee Schedule if the budgeted amount has been completely expended based on hourly rates quoted herein.

Task 9 – Preparation of Boundary Map

This task entails the preparation of the CFD boundary map pursuant to the requirements of the Mello-Roos Act and the County Recorder’s Office, assuming that computerized base maps are provided by the Client. Record map at the County Recorder’s office and distribute copy of recorded map to the project team.

B Phase II

DTA shall provide special tax consulting services, as described in the tasks below, necessary to assist the Client in the administration of the proposed CFD.

Task 1 – Land Use Research

Determine, gather and organize the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research: Identify and obtain copies of all final tract or parcel maps recorded within the CFD.
- 1.2 Development Research: Determine all building permit activity as of January 1 of the previous fiscal year. Identify issuance date, building square footage and situs address for each new building.
- 1.3 Assessor Parcel Research: Review current Assessor Parcel Maps to compile a list of the Assessor’s Parcels which will be valid for each fiscal year. Determine acreage of all parcels.
- 1.4 Database Management: Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 – Classification of Property

Apply the RMA to determine the appropriate special tax classification for each parcel located within each CFD, and includes the following subtasks:

- 2.1 Exempt Property: Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.



- 2.2 Taxable Property: Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 – Financial Analysis

Calculate the Special Tax Requirement for each fiscal year and allocating it to property in the CFD, and includes the following subtasks:

- 3.1 Determine Special Tax Requirement: Assist the Client with the calculation of the Special Tax A Requirement and Special Tax B Requirement.
- 3.2 Special Tax Rates: Based on tax classifications and special tax requirement, compute the current fiscal year Special Tax A and Special Tax B for all classifications of taxable property.

Task 4 – Report Preparation

Prepare the Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of the special tax levy for each Assessor's Parcel.

Task 5 – Enrollment of Special Taxes

Submit the special tax levy on or before August 10 of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

Task 6 – Delinquent Property Owner Research

Review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Semi-Annual Delinquent Special Tax Report: Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes: Assist the Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

Task 7 – Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 – Responses to Property Owner Questions



This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 – Annual Reporting/Disclosure

Assist the Client with meeting the annual disclosure requirements and includes the following subtasks:

- 9.1 Provide special tax disclosure documents to the Client for resale properties pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code as stated in SB 1464.
- 9.2 Assist the Client in the preparation of material in compliance with Section 50075 of the Government Code.
- 9.3 Assist the Client in the preparation of material in compliance with Section 12463.2 of the Government Code as stated in AB 2109.
- 9.4 Assist the Client with the posting of material on Client website in compliance with Section 53343.2 of the Government Code as stated in AB 1666.

FEE SCHEDULE

Professional Services Fee

DTA's fees related to Phases I and II shall not exceed the amounts shown in the table below (excluding expenses). At the Client's request, services in addition to those identified in the Scope of Work may be provided if the total fee required to complete Phases I and II is less than the amount shown. Alternatively, if the Scope of Work can be completed for less than the maximum amount, only the hours actually expended will be billed.

Table 1: Cost Breakdown

Phase	Budget
Phase I (Formation)	\$26,000
Phase II (Annual Administration)	\$7,500

DTA shall charge the following hourly fees for services related to Phases I and II:

Table 2: Hourly Rates

Labor Category	Labor Rate
Managing Director	\$270/Hour
Vice President	\$250/Hour
Manager	\$220/Hour
Senior Associate	\$190/Hour
Associate	\$160/Hour
Senior Analyst	\$150/Hour
Analyst	\$140/Hour
Research Assistant	\$115/Hour

Any additional tasks assigned by the Client if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. An excessive number of group conference calls (more than ten) or tax spread computer runs (more than 15) may also require additional fees if the total fee has been exceeded. Such additional fees shall be added to the "Total Fee" amounts listed above. The hourly fees listed above apply for a 12-month period after execution of this Agreement and are subject to a cost-of-living increase after that period and on an annual basis thereafter.

In addition to fees for services, the Client shall reimburse the Consultant for travel, photocopying, courier, facsimile, clerical, telephone expenses, and administrative charges, not to exceed \$1,000.

All budgets, rates, and expenses are subject to a cost of living increase every 12 months.

MOULE & POLYZOIDES

ARCHITECTS AND URBANISTS

July 6, 2021

Michael Diaz, Community Development Director
City of Montclair
5111 Benito Street
Montclair, CA 91763

Via E- mail: mdiaz@cityofmontclair.org; mfuentes@cityofmontclair.org

Re: Design Review of Alexan Mixed-Use Property

Dear Mike:

Moule & Polyzoides is pleased to present a proposal to the City of Montclair to assist the City in reviewing development applications submitted by Trammel Crow for a mixed-use building on the property located at the southwest corner of Arrow Highway and Monte Vista Avenue in North Montclair in accordance with Section 5.1.050 (Peer Review) of the North Montclair Downtown Specific Plan (NMDSP).

A. SCOPE OF WORK

Task 1: Schematic Design Review.

M&P will review Trammel Crow's Schematic Design Review development application, submitted per the requirements of NMDSP Section 5.1.050.C.1 (Schematic Design Review), for conformance with the vision and development regulations of the NMDSP. M&P will provide comments as direct mark-ups on the submitted PDF application file. M&P will participate in up to two meetings solely with City of Montclair Staff and up to two meetings with both City of Montclair staff and Trammel Crow representatives to review the design review package.

Deliverables for Task 1:

Marked-up PDF of design review submission. Attendance at up to four (4) meetings with City of Montclair and/or Trammel Crow representatives.

MOULE & POLYZOIDES
ARCHITECTS AND URBANISTS

Fees & Schedule for Task 1:

Work on this task will be completed within one month of receipt of Trammel Crow’s Schematic Design Review development application for a fee of \$ 6,000.00

Task 2: Final Design Review.

M&P will review Trammel Crow’s Final Design Review development application, submitted per the requirements of NMDSP Section 5.1.050.C.2 (Final Design Review), for conformance with the vision and development regulations of the NMDSP. M&P will provide comments as direct mark-ups on the submitted PDF application file. M&P will participate in up to two meetings solely with City of Montclair Staff and up to two meetings with both City of Montclair staff and Trammel Crow representatives to review the design review package.

Deliverables for Task 2:

Marked-up PDF of design review submission. Attendance at up to four (4) meetings with City of Montclair and/or Trammel Crow representatives.

Fees & Schedule for Task 2:

Work on this task will be completed within one month of receipt of Trammel Crow’s Final Design Review development application for a fee of \$ 6,000.00

B. FEESUMMARY

Moule & Polyzoides:

<i>Task 1: Review Initial Site Plan</i>	\$ 6,000.00
<i>Task 2: Review Follow-up Site Plan</i>	\$ 6,000.00
<i>Total.....</i>	<i>\$ 12,000.00</i>

Further review, including attendance at additional meetings, beyond the two reviews described in the above Scope of Work shall be subject to additional services as described below. Upon completion of the above tasks, Moule & Polyzoides will submit an invoice to the Client and will be paid within 30 days of submission.

Reimbursable expenses will be in addition, estimated as an allowance of \$100.00, and will include the costs of transportation, delivery, process printing and other costs incurred by the Consultant Team in its service on this project. Expenses will be billed by M&P to Client at a multiplier of 1.15 to cover administrative and processing costs.

MOULE & POLYZOIDES
ARCHITECTS AND URBANISTS

C. ADDITIONAL SERVICES

Should the Client request Moule & Polyzoides to provide Additional Services in addition to those set forth in the above Scope of Work, Moule & Polyzoides will prepare a scope, schedule, and budget for providing such services for approval by the Client. If any such services are to be paid on a time and materials basis, professional fee compensation shall be billed according to the schedule of the 2021 hourly rates for our firm as follows:

Partner:	\$ 340.00 per hour
Planning Principal:	\$ 260.00 per hour
Principal	\$ 260.00 per hour
Sr Associate	\$ 240 per hour
Associate	\$ 220 per hour
Staff/graphic designer	\$ 180 per hour
staff II	\$ 160 per hour

Such services will only be undertaken with the Client’s previous authorization.

We are very pleased to have the opportunity to continue to assist you in our role as town architect to ensure that new projects continue to transform Montclair according to the community’s vision.

Please call me, if you have any questions.

Sincerely,



Stefanos Polyzoides, Architect & Urbanist

ACCEPTED AND AGREED:

Name _____ Date _____

AGREEMENT NO. 21-53

A REIMBURSEMENT AGREEMENT

Between

**CITY OF MONTCLAIR
a California Municipal Corporation**

and

**Montclair Station Apartments, L.L.C.,
a Delaware limited liability company**

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement ("Agreement") is made this 2nd day of August, 2021, by and between the CITY OF MONTCLAIR, a California Municipal Corporation (the "City"), and Montclair Station Apartments, L.L.C., a Delaware limited partnership (the "Applicant").

RECITALS

This Agreement is made with respect to the following facts.

A. The Applicant is the owner of that certain real property ("Property") located within the City of Montclair, County of San Bernardino, California. The Property is more particularly described as an area of approximately 9.68 gross acres in size and is located on the northwest corner of Monte Vista Ave. and Richton Street, Montclair, CA. The Property is further described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Property is located within the boundaries of the North Montclair Downtown Specific Plan approved by the City Council on May 15, 2006 by Resolution No. 06-2628 and amended by the City Council on March 20, 2017 by Resolution No. 17-3149 ("Specific Plan"). The Applicant is contemplating the development of the Property and would like to develop the site in accordance with the provisions of the North Montclair Downtown Specific Plan ("the Project"). The project will consist of construction of approximately 300 residential units.

C. In order to contemplate development of the proposed project pursuant to the standards in the North Montclair Downtown Specific Plan, the Project will need to comply with the specific plan and require related compliance review. The review of compliance to the Specific Plan shall be referred to collectively as the ("Project.")

D. To provide the City with the needed expertise and information necessary for the City's approval of a Precise Plan of Design, preparation of a Maintenance & Operations Regulatory Agreement and establishment of Community Facilities District concerning the Project, it is or may become necessary for the City to access the services of certain outside planning, architecture, legal, financial, and other experts for the Project ("Consultants").

E. The Applicant has agreed to reimburse the City for Consultant's costs and expenses related to the Applicant's Project in the manner and amounts set forth in this Agreement. The Applicant's reimbursement to City under this Agreement will ensure that the City has the necessary resources to diligently and efficiently process certain conditions related to the Applicant's Project.

TERMS

NOW, THEREFORE, in consideration of the following mutual promises and agreements, City and Applicant agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the City and the Applicant have entered into this Agreement. The City and the Applicant each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.

2. City to Retain Consultants. As a necessary and indispensable part of the Conditions of Approval of Applicant's proposed Project and use of the Property, the City shall retain the services of Consultants as set forth in Section 4 of this Agreement to provide advice as the City may deem necessary in its reasonable and sole discretion. The contemplated general scope of work of the Consultants for the Project are attached hereto as Exhibit "B" and incorporated herein by reference, but the City reserves the right, in its reasonable and sole discretion, to amend the scope of work as it deems necessary and appropriate to the City's proper review and consideration of the Applicant's Project. However, if such amendment will cause, or will be likely to cause, the Estimated Costs (as defined in Section 5) to be exceeded, the City shall promptly notify Applicant thereof in writing (and in no event, less than five (5) business days after the City becomes aware of such information).

The Applicant agrees that, notwithstanding the Applicant's reimbursement obligations under this Agreement, Consultants shall be the contractors exclusively of the City and not of the Applicant. Except for those disclosures required by law, including, without limitation, the Public Records Act, all conversations, notes, memoranda, correspondence and other forms of communication by and between the City and its Consultants which are deemed under law to be privileged and confidential shall not be subject to disclosure to the Applicant. The Applicant agrees that it shall have no claim to, nor shall it assert any right in any reports, correspondence, plans, maps, drawings, news releases or any and all other documents or work product produced by the Consultants which is privileged or confidential under law; provided, however, the Applicant shall be provided with photocopies of all such documents or work product for which it has reimbursed the City which are not so privileged or confidential under law.

3. Applicant to Cooperate with Consultants. The Applicant agrees to cooperate in good faith with the Consultants. The Applicant agrees that it will instruct its agents, employees, consultants, contractors and attorneys to reasonably cooperate with the Consultants and to provide all necessary documents or information reasonably requested of them by the City and/or the Consultants; provided, however, that the foregoing shall not require the disclosure of any documents or information of the Applicant which by law is privileged, proprietary, confidential, and exempt from disclosure under the Public Records Act.

4. City's Selection of Consultants. The City proposes to retain the following as Consultants pursuant to Section 2 of this Agreement, but shall have the right to retain any additional consultants or sub-consultants pursuant to this Agreement: (1) Dudek (Environmental), (2) Best Best Kreiger, Attorneys at Law (BBK) (legal advisors on environmental and Community Facilities District), (3) David Taussig & Associates (Community Facilities District), and (4) Moule & Polyzoides, Urbanists and Architects (Land Use Consultants-related to applicants Project only). If and when the City determines to retain such additional consultants or subconsultants, it shall first so inform the Applicant of its intent to do so, and include with such information the terms and conditions (including fees) upon which such parties will be retained. The Applicant shall have five (5) business days in which to review and approve or disapprove the retention of such parties (approval shall not be unreasonably withheld or conditioned). Provided that the Applicant has not notified the City of its disapproval as to the retention of any such parties on or prior to the expiration of such five (5) business day period, the City may thereafter retain such parties upon the terms and conditions submitted to the Applicant. In the event that the Applicant reasonably objects to any such retention, the Applicant's objection shall state the reasons for its objection in sufficient detail that the City shall be able to address, and potentially remedy, such objection if the City so determines. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such objection) communicate in order to resolve any such objection, but if the parties are unable to resolve such objection, and if the City thereafter retains the disputed party, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to any Consultants.

5. Applicant's Reimbursement of Fees, Costs and Expenditures. The Applicant shall reimburse the City the actual fees, costs and other expenditures incurred by the City relative to the Consultants costs ("Costs") related to the Applicant's Project, subject to the terms and conditions of this Agreement. Applicant further understands and agrees that Costs are based upon the rates provided by Consultants attached hereto as Exhibit "C" to this Agreement.

The City has preliminarily reviewed the scope of work required and has estimated the aggregate Costs for all consultants to be approximately One Hundred Forty Eight Thousand Dollars (\$148,000) ("Estimated Costs"). Upon the execution of this Agreement and before August 31, 2021, the Applicant shall submit a deposit in the amount of Fifty Thousand (\$50,000) as the initial amount to cover the Estimated Costs, which amount the City shall separately account for in a Project deposit account ("Deposit Account").

At any time that the Deposit Account drops below Twenty Thousand Dollars (\$20,000), the City may make written demand on Applicant to replenish the Deposit Account to Fifty Thousand Dollars (\$50,000), and Applicant shall submit the required amount of funds to the Deposit Account within ten (10) calendar days. In the event Applicant fails to make any required deposit, City shall so notify Applicant in writing and

Applicant shall have ten (10) additional calendar days to replenish the Deposit Account. Thereafter, City shall have the right to consider Applicant's Project applications as withdrawn and cease processing such applications.

The City shall not exceed the Estimated Costs without first informing the Applicant in writing regarding the need for additional services which cause the Costs to exceed the Estimated Costs ("Excess Costs") and shall provide appropriate documentation of such Excess Costs in sufficient detail that the Applicant shall be able to reasonably evaluate such costs. Notwithstanding anything herein to the contrary, the City shall not incur Excess Costs without the express prior written consent of Applicant. The City shall also inform the Applicant in writing prior to amending any scope of services, or adding services, to be provided by the Consultants, and shall provide appropriate documentation of such amended or additional scope of work in sufficient detail that the Applicant shall be able to reasonably evaluate such amended scope, and approve or disapprove the same, in writing. The Applicant's obligation to reimburse the City for the Excess Costs shall be contingent upon the City providing Applicant with written notice of the amendment of the scope of services to be performed by Consultants and the estimated cost thereof as described hereinabove prior to the commencement of work and Applicant's approval thereof, as herein provided. Once the City provides such notice and obtains such approval, then Applicant shall be obligated to pay the Excess Costs in the same manner as the Estimated Costs provided above; provided, however, in the event that the Applicant reasonably disapproves any Excess Costs, the Applicant shall provide the City with a written objection not later than five (5) business days after receipt of the City's written notice stating the reasons for its disapproval in sufficient detail that the City shall be able to address. The City and the Applicant shall promptly (but in no event later than five (5) calendar days after such disapproval) communicate in order to resolve any such objection, but if the parties are unable to resolve such disapproval, and if the City thereafter pays any disputed Excess Costs, the Applicant shall have the sole and exclusive right to terminate this Agreement pursuant to Section 8 of this Agreement, subject to the Applicant's obligation to reimburse the City for all Costs incurred by the City prior to the date of termination, whether or not yet paid by the City to Consultant. Upon such termination by the Applicant, the City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

The City shall maintain accurate records of invoices received from, and payments made to, the Consultants resulting from the Project, and will provide a payment summary to Applicant within a reasonable time upon request. In the event that excess funds remain in the Deposit Account upon conclusion of the Project and after all final payments to the Consultants have been made, the City agrees to refund that excess amount, if any, to Applicant within fifteen (15) calendar days of final payment to the Consultants. Alternatively, if the Costs of the services of the Consultants exceed the Estimated Costs and Excess Costs, if any, then, subject to the terms and conditions of this Agreement, Applicant shall remain obligated to pay for all such Costs. Applicant shall pay any such amount within ten (10) calendar days of written demand for payment by City.

6. Conditions of Approval. Applicant and City understand and agree that Applicants' land use entitlements concerning the Property are subject to the Conditions of Approval granted by the Planning Commission and City Council and entering into said Reimbursement Agreement will aid the Applicant in satisfying certain Conditions of Approval of Applicant's proposed project

7. Term. The term of this Agreement shall commence on the date that this Agreement is approved by the City Council and fully executed by the parties, and shall terminate when all services required for the Project by Consultants have been completed to the City's reasonable satisfaction and the Applicant has satisfied all of its obligations under this Agreement. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs, whether or not paid by the City to Consultants prior to the date of termination, which accrue prior to the date of termination. The Applicant's obligation to reimburse (Section 5) the City as provided in this Agreement shall survive the termination of this Agreement pursuant to Section 8.

8. Early Termination.

8.1 By City. The City may, in its reasonable and sole discretion, terminate this Agreement prior to the term set forth in Section 6 above, without cost or liability to the City, upon thirty (30) days' prior written notice to the Applicant in the event that Applicant either: (1) fails to satisfy any material obligation of this Agreement (provided, however, if such failure is capable of being timely remedied without prejudice to the City, and is timely remedied by the Applicant, such failure shall be deemed to be waived); or (2) materially fails to reasonably prosecute its application(s) for the Project. In the event of such termination, Applicant shall be deemed to have withdrawn its application(s) for the Project.

8.2 By Applicant. The Applicant may, in its reasonable and sole discretion, terminate this Agreement prior to the end of the term set forth in Section 7 above, upon thirty (30) days' prior written notice to the City; provided, however, that Applicant's right to so terminate this Agreement is expressly contingent upon Applicant satisfying both of the following: (1) Applicant shall give City written notice withdrawing its application(s) for the Project; and (2) Applicant shall satisfy all of its obligations under this Agreement up through the effective date of termination. For purposes of this section, Applicant's obligations shall include, but shall not be limited to, its obligation to reimburse the City for Estimated Costs and Excess Costs incurred prior to the date of termination, whether or not paid by the City to Consultants prior to the date of termination.

Within two (2) working days following either the City's decision to terminate this Agreement or the City's receipt of written notice indicating the Applicant's decision to terminate this Agreement, the City shall notify all Consultants and instruct them to cease work on the Project. Consultants shall also be instructed to bill the City for any services completed prior to the date of termination. Upon such termination by the Applicant, the

City shall have the right to consider the Application withdrawn and no longer obligated to process such Application.

9. Assignability. This Agreement may not be assigned by either party without the prior and express written consent of the other party, which consent shall not be unreasonably withheld; provided, however, Applicant shall have the right to assign the Agreement to any entity that assumes ownership of the Property and in which Applicant or an affiliate thereof has an ownership interest. In determining whether to approve a request by the Applicant to assign this Agreement, the City may consider, among other things, the proposed assignee's financial status and commitment to the Project. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

10. No Oral Modifications. This Agreement represents the entire understanding of the City and the Applicant, and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only by a writing signed by both the authorized representatives of both the City and the Applicant. All modifications to this Agreement must be approved by the City Council of the City of Montclair.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon the City, the Applicant and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

12. Legal Challenges. Nothing herein shall be construed to require City to defend any third party claims and suits challenging any action taken by the City with regard to any procedural or substantive aspect of the City's approval of development of the Property, the environmental process, or the proposed Project. The Applicant may, however, in its sole and absolute discretion, appear as real party in interest in any such third party action or proceeding, and in such event, it and the City shall defend such action or proceeding and the Applicant shall be responsible and reimburse the City for whatever reasonable legal fees and expert or other costs, in their entirety, including reasonable attorneys' fees, which may be incurred by the City in defense of such action or proceeding. The City shall have the absolute right to retain such legal counsel as the City deems necessary and appropriate, and the Applicant shall reimburse the City for any and all reasonable attorneys' fees and expert or other costs incurred by the City as a result of such third-party action or proceeding; provided, however, the Applicant may, at any time, notify the City in writing of its decision to terminate such reimbursement obligation and, thereafter, the City may choose, in its sole discretion, to defend or not defend such third party action or proceeding. In the event that the City decides not to continue the defense of such third party action or proceeding, Applicant shall be obligated to reimburse City for any and all reasonable costs, fees, penalties or damages associated with dismissing the action or proceeding. In the event that the City decides to continue the defense of such third party action or proceeding, Applicant shall have no further obligation to reimburse City for its attorneys' fees and expert or other costs.

It is acknowledged by the parties that City is entering into this Agreement to assist Applicant in processing the Project. Applicant understands and agrees that City would not have entered this Agreement if it were to be liable in damages for breach of this Agreement. As a result, Applicant understands and agrees that City shall not be liable for damages to Applicant or any successor for breach of this Agreement or for any cause of action that arises from this Agreement, except to the extent of any amounts in the Deposit Account that remain unencumbered and shall be refunded to Applicant. Applicant's remedies shall be limited to termination of this Agreement, subject to the obligations contained in Section 8.2.

13. Attorneys' Fees. In the event that any action or proceeding, including arbitration, is commenced by the City to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its reasonable attorneys' fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys' fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Montclair, San Bernardino County, California. Any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of San Bernardino, California. The City and the Applicant each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, the City and the Applicant both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

16. Headings. The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

17. Representations of Authority. Each party signing this Agreement on behalf of a party which is not a natural person hereby represents and warrants to the other party that all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

18. Notices. Notices required under this Agreement shall be sent to the following:

If to City:

Edward C. Starr, City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763
Fax: 909-621-1584

If to the Applicant:

Alec Schiffer
Maple Multi-Family Development
5790 Fleet St. Suite 140
Carlsbad, CA 92008
aschiffer@tcr.com

Notices given pursuant to this Agreement shall be deemed received as follows:

- (1) If sent by United States Mail - five (5) calendar days after deposit into the United States Mail, first class postage prepaid.
- (2) If by facsimile - upon transmission and actual receipt by the receiving party.
- (3) If by express courier service or hand delivery - on the date of receipt by the receiving party.

The addresses for notices set forth in this Section 18 may be changed upon written notice of such change to either the City or the Applicant, as appropriate.

CITY OF MONTCLAIR
a California Municipal Corporation

By: _____
Javier John Dutrey, Mayor

ATTEST:

By: _____
Andrea M. Myrick, City Clerk

APPROVED AS TO FORM:

By: _____
Diane E. Robbins, City Attorney

Montclair Station Apartments, L.L.C., a Delaware limited liability company

By: CCH 120 Montclair Station, L.P., a Delaware limited partnership, its managing member

By: Maple Multi-Family Development, L.L.C., a Texas limited liability company, its general partner

By: _____
Alec Schiffer, Vice President

ATTEST:

By: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MONTCLAIR, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

THAT PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 10, TOWNSHIP 1 SOUTH, RANGE 8 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT APPROVED BY THE SURVEYOR GENERAL.

LYING SOUTHERLY OF A STRIP OF LAND 150 FEET WIDE, WHICH WAS CONVEYED BY MARGARET FLEMING BY DEED RECORDED DECEMBER 13, 1909 IN BOOK 449, PAGE 28 OF DEEDS, BEING MORE PARTICULARLY DESCRIBED AS EXTENDING FROM THE EASTERLY LINE OF THE ABOVE MENTIONED EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10 TO THE WESTERLY LINE THEREOF, AND BEING 75 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED SURVEYED CENTER LINE OF THE ONTARIO & SAN ANTONIO HEIGHTS RAILROAD, TO WIT;

BEGINNING AT RAILWAY SURVEY STATION 143 + 12.85 OF THE SURVEYED CENTER LINE OF THE ONTARIO & SAN ANTONIO HEIGHTS RAILROAD, SAID RAILROAD SURVEY STATION BEING IN THE EASTERLY LINE OF SAID SECTION 10 AND NORTHERLY 1246.85 FEET FROM THE SOUTHEAST CORNER THEREOF; THENCE FROM SAID POINT OF BEGINNING SOUTH 82° 50' WEST, 1339.17 FEET TO RAILROAD SURVEY STATION 156 + 52.02 OF THE SURVEYED CENTER LINE OF THE ONTARIO & SAN ANTONIO HEIGHTS RAILROAD, SAID LAST MENTIONED RAILWAY SURVEY STATION BEING IN THE WEST LINE OF THE ABOVE MENTIONED EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 10 AND SOUTH 0° 52' EAST 1530.16 FEET FROM THE NORTHWEST CORNER OF THE SAID EAST 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 10.

AND LYING NORTHERLY OF A STRIP OF LAND 100 FEET WIDE, AS CONVEYED TO THE SAN BERNARDINO AND LOS ANGELES RAILWAY COMPANY BY JAMES T. TAYLOR, ET AL., BY DEED RECORDED MARCH 31, 1887, IN BOOK 53, PAGE 365 OF DEEDS, AS SAID RIGHT OF WAY IS SHOWN ON PARCEL MAP 5663 ON FILE IN BOOK 72, PAGES 20 AND 21 OF PARCEL MAPS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING EAST OF THE CENTER LINE OF THAT CERTAIN STRIP OF LAND CONVEYED TO THE UNITED STATES OF AMERICA BY DOCUMENT RECORDED FEBRUARY 17, 1959, IN BOOK 4734, PAGE 521, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED DECEMBER 19, 1984 AS INSTRUMENT NO. 84-302041, OFFICIAL RECORDS.

PARCEL B:

A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS RESERVED IN DEED RECORDED DECEMBER 19, 1984 AS INSTRUMENT NO. 84-302041 OF OFFICIAL RECORDS.

APN: 1007-722-03-0-000

EXHIBIT "B"
SCOPE OF SERVICE FOR CONSULTANTS

DUDEK

Services related to environmental evaluation under CEQA.

BEST BEST & KREIGER Attorneys at Law (BBK)

BBK will provide legal services related to (1) documents, advice, and review for a Community Facilities District; (2) provide documents, advice and review regarding the development process for the proposed Trammel Crow Residential – Vulcan Site Project, including compliance with the California Environmental Quality Act; and, (3) advice and/or review of Operating Agreements, Covenants, Conditions and Restrictions, Parking Management Agreements and/or other documents that may be needed or required for the project.

DAVID TAUSSIG & ASSOCIATES

Services related to formation of the rate and method and implementation of a Community Facilities District

MOULE & POLYZOIDES

Services related to design and architectural review of the project.

EXHIBIT "C"
BILLING FOR EACH CONSULTANT

June 12, 2021

Mikey D. Fuentes
City of Montclair
5111 Benito St
Montclair, CA 91763

Subject: Proposal to Prepare Environmental Evaluation under the California Environmental Quality Act for the Vulcan Site Residential Project

Dear Mr. Fuentes:

Thank you for inviting Dudek to submit a proposal to prepare documentation in compliance with California Environmental Quality Act (CEQA) for the proposed Vulcan Site Residential Project.

Vulcan Site Residential Project

The City of Montclair (City) is the CEQA lead agency for the Vulcan Site Residential Project (proposed project) to be constructed by Trammell Crow Residential Company. The proposed project would include the development of 302 residential units, a community paseo, a 2,200 square foot leasing office, a pool and a 533-space surface parking lot on the Vulcan site of the North Montclair Downtown Community Plan area in Montclair, California. Dudek proposes to prepare an Initial Study/Environmental Checklist (IS/Checklist) tiering from the North Montclair Downtown Specific Plan Amendment Project Supplemental Environmental Impact Report (SEIR) (State Clearinghouse No. 2016101001) that was certified by the City in 2017. The IS/Checklist will determine whether the current application would result in any new or substantially more severe environmental impacts compared to that evaluated in the SEIR. The results of the IS/Checklist will assist the City in determining what level of environmental document is appropriate for consideration of project approval.

The following scope of work assumes that after reviewing the IS/Checklist the City will determine that none of the conditions described in State CEQA Guidelines Section 15162 or 15163 calling for preparation of a supplemental or subsequent EIR have occurred. Therefore, an Addendum to the 2017 SEIR should be prepared for the proposed project. If the City determines through the checklist review process that the proposed project would result in new or substantially more severe significant environmental impacts resulting from changes in the project or circumstances, or from new information of substantial importance as defined in the CEQA Guidelines, then Dudek would provide the City with a scope of work for the preparation of a Mitigated Negative Declaration (MND) or supplement to or subsequent EIR.

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

The following captures the tasks necessary to prepare an Addendum to the 2017 SEIR. Dudek proposes that Candice Disney Magnus be the Dudek Project Manager for the following tasks.

SCOPE OF WORK

Task 1: Project Initiation and Materials Review

Dudek will review all relevant project materials including the project application, available technical studies, background information, and other applicable regulations. The Dudek project manager will attend a kick-off meeting with City staff that will provide Dudek an opportunity to inquire further about the project and receive applicable background documents. Dudek will review information provided for the project and will notify the City of any requests for additional information needed to prepare the IS/Checklist via an Information Request List.

Deliverables: Information Request List

Task 2: Develop Project Description

Once responses to the Information Request List are received, Dudek will work with the Applicant team to prepare a detailed description of the proposed project and if it is consistent with what was evaluated in the 2017 SEIR. This description will combine text, tables, and figures to create a comprehensive, yet easy to understand project description. The project description will be prepared in accordance with CEQA Guidelines, Section 15124, and will describe the basic characteristics of the project, including site location and boundaries, background information, technical and environmental characteristics, project size, project construction methodologies and project operation. Accompanying the project description will be a list of the anticipated responsible and trustee agencies, as well as necessary discretionary actions including permits, characterized by jurisdiction.

Dudek will submit the draft updated project description to the City and the Applicant team for review and will revise accordingly before finalizing the project description.

Deliverables: Draft Project Description (in Word and PDF), and Final Project Description (in Word and PDF).

Task 3: Prepare Environmental Checklist/Technical Analysis

The Dudek team will prepare a Draft Project-Specific IS/Checklist for the proposed project. The Addendum will use the information and technical studies prepared for the SEIR to provide a project-level review of whether the proposed project is consistent with the programmed growth

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

identified in the 2017 SEIR. The Addendum will also document whether the land use and development associated with the proposed project is consistent with the objectives, land use designations, and development and population forecasts as analyzed in the 2017 SEIR. To determine whether the proposed Project is sufficiently addressed by the 2017 SEIR, Dudek will evaluate the following questions:

- Are the objectives of the proposed project consistent with the objectives of the 2017 SEIR?
- Are the changes to the North Montclair Downtown Specific Plan area associated with the proposed project included within the scope of the 2017 SEIR projections?
- Is the proposed location of the project site in an area designated for this type of use in the 2017 SEIR?
- Are the proposed project activities within the scope of the environmental analysis in the 2017 SEIR?
- Have the conditions described in the CEQA Guidelines 15162 for the preparation of a supplemental or subsequent EIR occurred?

The Initial Study will also include an evaluation that would determine if any of the environmental resource areas on the CEQA Guidelines Appendix G would be potentially affected by the proposed project or would involve any significant impacts that substantially exceed development or activities evaluated for potential environmental impacts in the 2017 SEIR. This scope of work assumes that the proposed project will be deemed entirely consistent with and covered by the environmental analysis contained in the 2017 SEIR. The evaluation of consistency with the 2017 SEIR analysis will include the full range of environmental topics reflected in CEQA Appendix G. The IS/Checklist will assess the following points for each environmental topic in Appendix G:

- Was the impact analyzed in the prior environmental document? (If so, where.)
- Do proposed changes involve new significant impacts or substantially more severe impacts?
- Are there new circumstances involving new significant impacts or substantially more severe impacts?
- Is there any significant new information requiring new analysis or verification?
- Are only technical changes or additions needed to make the prior environmental document sufficient for the project?
- Do mitigation measures from the prior environmental document resolve significant impacts?

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

The checklist will address all environmental topic areas and will describe existing conditions, assess potential environmental impacts, and recommend feasible mitigation measures if necessary. The level of analysis and degree of impact will vary depending upon the environmental topic but will be sufficient to provide the substantial evidence to support the conclusions, consistent with CEQA requirements and prior legal direction from the courts. All issue areas included in Appendix G of the State CEQA Guidelines will be addressed, with emphasis on those issues with potential for significant effects, particularly construction related effects to air quality/greenhouse gas emissions, biological resources, noise, and transportation. The analysis will consider differences between the certified 2017 SEIR along with changes in circumstances that may alter conclusions about significant environmental effects, including cumulative impacts and regulatory changes. If data gaps are identified, the checklist results will also include a list of data that needs to be supplemented for an adequate environmental analysis.

Dudek is assuming that information for this analysis will be gathered from the technical studies prepared for the 2017 SEIR, technical studies provided by the Applicant and various sources typically used in CEQA analysis. Thus, this scope of work assumes that no new technical studies will be prepared by Dudek. Dudek is assuming the technical studies to be supplied by the Applicant team will include a project specific drainage report and any necessary drainage exhibits that will document proposed improvements. Dudek assumes that our water quality and hydrology experts will review these studies but will not be asked to perform or update drainage calculations, runoff quantities, etc. Dudek is also assuming that the Applicant team will prepare a project specific noise analysis, a Phase 1 hazardous assessment and a geotechnical analysis that will document any potential construction and operational noise, hazardous and geotechnical impacts for the proposed project. Dudek's technical specialists will review these analyses while preparing the noise, hazardous and geotechnical sections of the IS/Checklist but we are assuming Dudek will not be asked to produce any additional analysis. If these assumptions are not correct, Dudek can provide a scope of work and cost for any needed technical studies.

Once all technical information is collected and analyzed, Dudek will submit the draft IS/Checklist to the City and the Applicant team for review and will revise accordingly before finalizing the IS/Checklist.

Deliverables: Draft IS/Checklist (in Word and PDF), and Final IS/Checklist (in Word and PDF).

Task 4 – Preparation of an Addendum to the 2017 EIR

Once the City makes the formal determination that an Addendum is the appropriate environmental document, Dudek will prepare the Addendum documentation pursuant to CEQA Guidelines

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

section 15162. The Addendum will package the information and analyses from the IS/Checklist with an introduction discussing what triggered the Addendum, a summary of the previous environmental analyses included in the 2017 SEIR and requirements for CEQA review after an EIR has been certified.

Guidance and review of the Addendum and the administrative record will be undertaken in close coordination with City planning and legal staff. One round of review of the Draft Addendum is included in this task. Dudek will maintain a tracking sheet identifying the status of any comments made on the Addendum as it progresses from preparation through District staff and legal review and will produce the Final Addendum once all comments are addressed.

Deliverables: Draft Screencheck Addendum (in Word and PDF), Final Addendum (in Word and PDF) and tracking matrix.

Task 5: Project Coordination

Dudek's Project Manager will actively manage the tasks identified in Tasks 1 and 4 of this proposal. The Project Manager will include regular communications with City staff and the Applicant team by either phone, email or in person, throughout our work effort. Management tasks will also include tracking costs and schedule. Dudek will provide the City with a master schedule for Tasks 1 and 4 above and will provide the City with a monthly status report documenting the work performed during the prior month and the work expected to be completed in the next month.

Deliverables: Invoices, monthly progress reports, master schedule

Task 4: Project Meetings

Dudek anticipates that bi-weekly team meetings will be arranged with the City and Applicant team over a six-month period. These meetings will allow the team to discuss our progress and implications of the environmental analysis. For cost estimating purposes, Dudek has included 12 bi-weekly meetings (either conference calls or in-person) during the six-month period averaging two hours for preparation and participation. Dudek will also assist the City planner with sharing the Addendum with meetings for City management or leadership as requested.

Deliverables: Project file (electronic and paper versions), team meeting agendas and notes, meeting summaries, project schedule, FTP sites

Additional Assumptions

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

Assumptions for this scope of work include the following:

- Once preparation of the first administrative versions of the Draft Addendum have begun, no changes to the updated project will occur, which would result in revisions to the updated project description, report graphics, or re-analysis of any environmental issue.

ESTIMATED SCHEDULE AND COSTS

1. ANTICIPATED PROJECT SCHEDULE

The Dudek team shall perform and complete the required services as agreed to by the City. The anticipated start date is July 1, 2021 and the duration of the schedule for the tasks covered under this Scope of Work is estimated to be approximately 6 months (January 2022). A more detailed schedule may be agreed upon by the City and Dudek and project meeting budgets may need to be adjusted accordingly. The Dudek team will work cooperatively with the City and the Applicant team to complete the tasks in a timely manner. The Dudek Project Manager will keep the City staff informed of the progress of said services at all times.

2. ANTICIPATED ESTIMATED COSTS

This is a Time and Materials Agreement that will be invoiced via hourly rates. The work hours anticipated and estimated cost breakdown for the tasks covered by this Scope of Work is covered in Table 1, Cost Estimate. Costs were calculated based on anticipated hours to be worked and materials needed for this project.

**Table 1.
Cost Estimate**

Tasks	Cost Estimate \$180/hr.
Task 1: Project Initiation and Materials Review	\$2,280
Task 2: Preparation of Updated Project Description	\$7,775
Task 2: Preparation of an Initial Study/Checklist	\$12,985
Task 3: Preparation of Addendum to the 2017 MND	\$2,860
Task 3: Project Coordination	\$3,800
Task 4: Project Meetings	\$4,560
Total	\$34,260

Please do not hesitate to contact me at 760-642-8261 or cmagnus@dudek.com with any questions.

Mr. Mikey D. Fuentes

Subject: Vulcan Site Residential Project CEQA Document Proposal

Sincerely,

A handwritten signature in blue ink that reads "Candice Disney Magnus". The signature is written in a cursive style.

Candice Disney Magnus
Senior Project Manager



BEST BEST & KRIEGER
ATTORNEYS AT LAW

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Alisha M. Winterswyk
(949) 263-6565
alisha.winterswyk@bbklaw.com
File No. 09957.00000

May 10, 2021

VIA E-MAIL TO: MFUENTES@CITYOFMONTCLAIR.ORG

Mikey Fuentes
Senior Management Analyst
City of Montclair
5111 Benito Street
Montclair, CA 91763

Re: Continued Engagement of Best Best & Krieger LLP – Trammel Crow
Residential - Vulcan Site Project

Dear Mikey:

Best Best & Krieger LLP is pleased to continue to represent the City of Montclair regarding the Trammel Crow Residential - Vulcan Site Project. Specifically, you have asked us to assist the City and provide legal services related to (1) documents, advice, and review for a Community Facilities District; (2) provide documents, advice and review regarding the development process for the proposed Trammel Crow Residential – Vulcan Site Project, including compliance with the California Environmental Quality Act; and, (3) advice and/or review of Operating Agreements, Covenants, Conditions and Restrictions, Parking Management Agreements and/or other documents that may be needed or required for the Trammel Crow Residential – Vulcan Site Project.

Except as to the above scope of our representation in this matter, the terms of our representation are set forth in our original engagement letter subject to the updated fee arrangement. The hourly rates for such services are as follows:

Alisha Winterswyk, Partner	\$530 per hour
Marco Martinez, Partner	\$510 per hour
Mrunal Shah, Partner	\$485 per hour
Monica Castillo, Associate	\$360 per hour

We have checked the following names against our client index: Trammel Crow Residential, Alec Schiffer and Reece Pettersen. Based on the conflict check performed for this matter, it was determined that we have no existing conflicts. Please review the list. If you do not
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BEST BEST & KRIEGER
ATTORNEYS AT LAW

Mikey Fuentes
May 10, 2021
Page 2

tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

If this letter meets with your approval, please sign and date it, and return it to us. If you have any other questions or concerns about the terms of our representation, please contact me. Thank you for the opportunity to continue to represent the City of Montclair.

Sincerely,

Alisha M. Winterswyk
of BEST BEST & KRIEGER LLP

AMW:mmc

AGREED AND ACCEPTED:

By: _____

Dated: _____



SCOPE OF WORK

A Phase I

DTA shall provide special tax consulting services, as described in the tasks below, necessary to assist the Client in the formation of a CFD to finance certain annual services for the project known as the Vulcan Site expected to encompass 302 residential units.

Task 1 – Initial Kick-off Call

Attend an initial kick-off call to discuss the scope of work, proposed schedule, and to identify any other issues prior to beginning work.

Task 2 – Research

Gather the necessary data from the Client and Developer with the assistance of DTA. The Client and Developer are responsible for providing and verifying data describing types of development, improved property values, net taxable acreage, and the estimated cost of the annual services proposed to be financed. DTA shall rely on such data provided by the Client and Developer, and shall not be responsible for verifying its accuracy. DTA shall also compile assessor's data for the project area.

Task 3 – Preliminary Tax Spread

Prepare initial spread of special taxes (the "Tax Spread") based on land use, building square footage, and/or acreage as obtained through Task 2 above. Calculate special taxes to support proposed annual services costs. DTA may recommend alternative techniques to apportion special taxes to enhance project feasibility.

Task 4 – Rate and Method of Apportionment

Prepare the Rate and Method of Apportionment of Special Tax (the "RMA") which describes the methodology used to calculate the annual special tax levy for the CFD. DTA shall work with Client staff to modify the RMA as needed.

Task 5 – Public Report

Prepare the Public Report, as described in Section 53321.5 of the California Government Code, containing descriptions of the proposed services, their estimated costs, and maximum annual special tax rates.

Task 6 – Document Review and Preparation

Assist the Client with the preparation of required documents, including the Resolution of Intention, Resolution of Formation, and related items.

Task – Verbal Consulting Services

Provide verbal consulting services and advice to the Client and other Project Developers regarding the special tax and apportionment methodology during the period in which Tasks 1 through 6 are being completed.



Task 8 – Coordination

DTA shall attend conference calls as needed, including the meeting described in Task 1 above. These calls may be used to discuss or present the Tax Spread, Rate and Method of Apportionment of Special Tax, Public Report, or other items prepared by DTA. They may also be used for the protest hearing, or other public meetings. In-person meetings attended by DTA will require fees beyond the maximum established in the Fee Schedule if the budgeted amount has been completely expended based on hourly rates quoted herein.

Task 9 – Preparation of Boundary Map

This task entails the preparation of the CFD boundary map pursuant to the requirements of the Mello-Roos Act and the County Recorder’s Office, assuming that computerized base maps are provided by the Client. Record map at the County Recorder’s office and distribute copy of recorded map to the project team.

B Phase II

DTA shall provide special tax consulting services, as described in the tasks below, necessary to assist the Client in the administration of the proposed CFD.

Task 1 – Land Use Research

Determine, gather and organize the land use data required to apportion and collect special taxes, and includes the following subtasks:

- 1.1 Subdivision Research: Identify and obtain copies of all final tract or parcel maps recorded within the CFD.
- 1.2 Development Research: Determine all building permit activity as of January 1 of the previous fiscal year. Identify issuance date, building square footage and situs address for each new building.
- 1.3 Assessor Parcel Research: Review current Assessor Parcel Maps to compile a list of the Assessor’s Parcels which will be valid for each fiscal year. Determine acreage of all parcels.
- 1.4 Database Management: Create automated parcel database that will include information for all parcels. Data will include Assessor Parcel Number and corresponding tract, lot and unit number, acreage, building square footage, building permit issuance date and situs address.

Task 2 – Classification of Property

Apply the RMA to determine the appropriate special tax classification for each parcel located within each CFD, and includes the following subtasks:

- 2.1 Exempt Property: Identify all property owned by public agencies or entities otherwise exempt from the special tax and classify as exempt property.



- 2.2 Taxable Property: Identify all taxable properties and classify each as "Developed Property" or "Undeveloped Property." Assign each "Developed Property" to the appropriate special tax classification.

Task 3 – Financial Analysis

Calculate the Special Tax Requirement for each fiscal year and allocating it to property in the CFD, and includes the following subtasks:

- 3.1 Determine Special Tax Requirement: Assist the Client with the calculation of the Special Tax A Requirement and Special Tax B Requirement.
- 3.2 Special Tax Rates: Based on tax classifications and special tax requirement, compute the current fiscal year Special Tax A and Special Tax B for all classifications of taxable property.

Task 4 – Report Preparation

Prepare the Annual Special Tax Report containing the findings of the financial analysis and an explanation of the methodology employed to apportion the special taxes. Included in the report is a list of the special tax levy for each Assessor's Parcel.

Task 5 – Enrollment of Special Taxes

Submit the special tax levy on or before August 10 of each year, or such other date specified by the County of San Bernardino to the Auditor-Controller, for inclusion on the consolidated property tax bills. The special tax levy will be submitted on magnetic tape or other media as specified by the County.

Task 6 – Delinquent Property Owner Research

Review and research of County records to determine which parcels are delinquent in the payment of property and special taxes, and includes the following subtasks:

- 6.1 Semi-Annual Delinquent Special Tax Report: Review special tax payment information from the County of San Bernardino. Determine which parcels are delinquent and the corresponding amount of delinquent special taxes. Prepare report summarizing the amount of delinquent special taxes.
- 6.2 Collection of Delinquent Special Taxes: Assist the Client with the development of procedures to cure delinquent special taxes. Assist with the preparation of demand letters as necessary.

Task 7 – Roll Changes and Adjusted Property Tax Bills

This task involves monitoring any changes to the secured tax roll which necessitate new or adjusted property tax bills. This task includes the calculation of new or adjusted bills and the preparation of requests to the County to prepare such bills.

Task 8 – Responses to Property Owner Questions



This task involves the provision of information to individuals and other interested parties regarding the amount and calculation of the special tax.

Task 9 – Annual Reporting/Disclosure

Assist the Client with meeting the annual disclosure requirements and includes the following subtasks:

- 9.1 Provide special tax disclosure documents to the Client for resale properties pursuant to Section 1102.6b of the Civil Code and Section 53340.2 of the Government Code as stated in SB 1464.
- 9.2 Assist the Client in the preparation of material in compliance with Section 50075 of the Government Code.
- 9.3 Assist the Client in the preparation of material in compliance with Section 12463.2 of the Government Code as stated in AB 2109.
- 9.4 Assist the Client with the posting of material on Client website in compliance with Section 53343.2 of the Government Code as stated in AB 1666.

FEE SCHEDULE

Professional Services Fee

DTA's fees related to Phases I and II shall not exceed the amounts shown in the table below (excluding expenses). At the Client's request, services in addition to those identified in the Scope of Work may be provided if the total fee required to complete Phases I and II is less than the amount shown. Alternatively, if the Scope of Work can be completed for less than the maximum amount, only the hours actually expended will be billed.

Table 1: Cost Breakdown

Phase	Budget
Phase I (Formation)	\$26,000
Phase II (Annual Administration)	\$7,500

DTA shall charge the following hourly fees for services related to Phases I and II:

Table 2: Hourly Rates

Labor Category	Labor Rate
Managing Director	\$270/Hour
Vice President	\$250/Hour
Manager	\$220/Hour
Senior Associate	\$190/Hour
Associate	\$160/Hour
Senior Analyst	\$150/Hour
Analyst	\$140/Hour
Research Assistant	\$115/Hour

Any additional tasks assigned by the Client if the total fee listed above has been exceeded shall be charged at the hourly rates listed above. An excessive number of group conference calls (more than ten) or tax spread computer runs (more than 15) may also require additional fees if the total fee has been exceeded. Such additional fees shall be added to the "Total Fee" amounts listed above. The hourly fees listed above apply for a 12-month period after execution of this Agreement and are subject to a cost-of-living increase after that period and on an annual basis thereafter.

In addition to fees for services, the Client shall reimburse the Consultant for travel, photocopying, courier, facsimile, clerical, telephone expenses, and administrative charges, not to exceed \$1,000.

All budgets, rates, and expenses are subject to a cost of living increase every 12 months.

MOULE & POLYZOIDES

ARCHITECTS AND URBANISTS

May 26, 2021

Michael Diaz, Community Development Director
City of Montclair
5111 Benito Street
Montclair, CA 91763

Via E- mail: mdiaz@cityofmontclair.org; mfuentes@cityofmontclair.org

Re: Design Review of Vulcan Property

Dear Mike:

Moule & Polyzoides is pleased to present a proposal to the City of Montclair to assist the City in reviewing development applications submitted by Trammel Crow for a multi-family residential project on the Vulcan property in North Montclair in accordance with Section 5.1.050 (Peer Review) of the North Montclair Downtown Specific Plan (NMDSP).

A. SCOPE OF WORK

Task 1: Schematic Design Review.

M&P will review Trammel Crow's Schematic Design Review development application, submitted per the requirements of NMDSP Section 5.1.050.C.1 (Schematic Design Review), for conformance with the vision and development regulations of the NMDSP. M&P will provide comments as direct mark-ups on the submitted PDF application file. M&P will participate in up to two meetings solely with City of Montclair Staff and up to two meetings with both City of Montclair staff and Trammel Crow representatives to review the design review package.

Deliverables for Task 1:

Marked-up PDF of design review submission. Attendance at up to four (4) meetings with City of Montclair and/or Trammel Crow representatives.

MOULE & POLYZOIDES
ARCHITECTS AND URBANISTS

Fees & Schedule for Task 1:

Work on this task will be completed within one month of receipt of Trammel Crow’s Schematic Design Review development application for a fee of \$ 5,000.00

Task 2: Final Design Review.

M&P will review Trammel Crow’s Final Design Review development application, submitted per the requirements of NMDSP Section 5.1.050.C.2 (Final Design Review), for conformance with the vision and development regulations of the NMDSP. M&P will provide comments as direct mark-ups on the submitted PDF application file. M&P will participate in up to two meetings solely with City of Montclair Staff and up to two meetings with both City of Montclair staff and Trammel Crow representatives to review the design review package.

Deliverables for Task 2:

Marked-up PDF of design review submission. Attendance at up to four (4) meetings with City of Montclair and/or Trammel Crow representatives.

Fees & Schedule for Task 2:

Work on this task will be completed within one month of receipt of Trammel Crow’s Final Design Review development application for a fee of \$ 5,000.00

B. FEE SUMMARY

<i>Moule & Polyzoides:</i>	
<i>Task 1: Review Initial Site Plan</i>	\$ 6,000.00
<i>Task 2: Review Follow-up Site Plan</i>	\$ 6,000.00
<i>Total.....</i>	<i>\$ 12,000.00</i>

Further review, including attendance at additional meetings, beyond the two reviews described in the above Scope of Work shall be subject to additional services as described below. Upon completion of the above tasks, Moule & Polyzoides will submit an invoice to the Client and will be paid within 30 days of submission.

Reimbursable expenses will be in addition, estimated as an allowance of \$100.00, and will include the costs of transportation, delivery, process printing and other costs incurred by the Consultant Team in its service on this project. Expenses will be billed by M&P to Client at a multiplier of 1.15 to cover administrative and processing costs.

MOULE & POLYZOIDES
ARCHITECTS AND URBANISTS

C. ADDITIONAL SERVICES

Should the Client request Moule & Polyzoides to provide Additional Services in addition to those set forth in the above Scope of Work, Moule & Polyzoides will prepare a scope, schedule, and budget for providing such services for approval by the Client. If any such services are to be paid on a time and materials basis, professional fee compensation shall be billed according to the schedule of the 2021 hourly rates for our firm as follows:

Partner:	\$ 340.00 per hour
Planning Principal:	\$ 260.00 per hour
Principal	\$ 260.00 per hour
Sr Associate	\$240 per hour
Associate	\$220 per hour
Staff/graphic designer	\$180 per hour
staff II	\$160 per hour

Such services will only be undertaken with the Client’s previous authorization.

We are very pleased to have the opportunity to continue to assist you in our role as town architect to ensure that new projects continue to transform Montclair according to the community’s vision.

Please call me, if you have any questions.

Sincerely,



Stefanos Polyzoides, Architect & Urbanist

ACCEPTED AND AGREED:

Name _____ Date _____



CITY COUNCIL AGENDA REPORT

DATE: AUGUST 2, 2021 **FILE I.D.:** TRN510
SECTION: CONSENT - RESOLUTIONS **DEPT.:** PUBLIC WORKS
ITEM NO.: 1 **PREPARER:** S. STANTON
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 21-3301 APPROVING A LIST OF PROJECTS TO BE FUNDED BY SENATE BILL 1 (SB1) FROM THE STATE OF CALIFORNIA ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

REASON FOR CONSIDERATION: On April 28, 2017, the Governor signed The Road Repair and Accountability Act of 2017, also known as Senate Bill 1 (SB1). To establish eligibility for that new legislation, and thereby receive funding, the California Transportation Commission (CTC) requires a resolution specifying the projects to which each city intends to spend its SB1 funding allocation for Fiscal Year 2021-2022. The City Council is requested to consider adopting Resolution No. 21-3301 confirming the allocation of SB1 funding in FY 2021-22 for two projects: the North Montclair Traffic Signal Interconnect Project and the Ramona Avenue and Howard Street Roundabout Project.

BACKGROUND: The Road Repair and Accountability Act of 2017 provides funding to cities and counties for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system through the creation of a Road Maintenance and Repair Account (RMRA). SB1 will increase the per gallon fuel excise taxes, diesel fuel sales taxes, vehicle registration and taxes, and provide inflationary adjustments to fuel tax rates in future years. Upon full implementation, SB1 will generate over \$5.0 billion annually in California, with approximately \$1.5 billion going to cities and counties for local streets and roads annually.

Collected tax revenue will be deposited into a new road maintenance and rehabilitation account and some of this new RMRA funding will be apportioned by formula to eligible cities and counties. It is important to note that new RMRA allocations may not be used to supplant local agency general fund spending for street maintenance and rehabilitation efforts. Therefore, in addition to meeting new transparency and reporting requirements, local agencies will be required to sustain existing maintenance of effort (MOE) levels by continuing general fund street expenditures as specified in the legislation.

For the current fiscal year (FY 2021-2022), it is estimated that the City of Montclair will receive approximately \$774,000 in RMRA funding, with monthly payments starting in September 2021.

Pursuant to Streets and Highways Code Section 2030, RMRA funds must be used for projects that include but are not limited to the following:

- Road maintenance and rehabilitation
- Safety projects
- Railroad grade separations
- Traffic control devices
- Complete street components, including active transportation (bicycle and pedestrian) projects, transit facilities, and storm-water capture projects.

RMRA funds may also be used to satisfy a match requirement in order to obtain state or federal funds for eligible projects. Also, to the extent possible, cost permitting, cities and counties are encouraged to include the following project elements:

- Advanced recycling techniques that lower greenhouse gas emissions and reduce the cost of maintaining streets through material choice and construction methods.
- Transportation infrastructure that supports technologies such as zero emission vehicle fueling or charging.
- Complete street elements that improve safety or the quality of bicycle or pedestrian facilities.

Staff has identified two projects for the use of RMRA funding:

1. *North Montclair Traffic Signal Interconnect Project (Design Only)*

This project would complete a design of the City's traffic signal interconnect system allowing for a fiber optic signal connection from City Hall to all traffic signals north of the Interstate 10 Freeway.

2. *Ramona Avenue and Howard Street Roundabout Project*

This project will construct a traffic calming roundabout and refuge island; high visibility crosswalks; ADA compliant curb ramps; and include intersection lighting.

Both projects have a minimum life expectancy of twenty years and will be identified in the 2021-2026 Capital Improvement Program as projects expected to be completed in Fiscal Year 2021-22.

FISCAL IMPACT: Since the City Council has not approved the FY 2022-2026 Five-Year Capital Improvement Program to date, there is no fiscal impact associated with the recommended action.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3301 approving a list of projects to be funded by Senate Bill 1 (SB1) from the State of California Road Repair and Accountability Act of 2017.

RESOLUTION NO. 21-3301

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2021-22 FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt by resolution a list of projects proposed to receive fiscal year funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive an estimated \$747,220 in RMRA funding in Fiscal Year 2021-2022 from SB 1; and

WHEREAS, this is the fourth year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate two streets, one bridge throughout the City this year and countless of similar projects into the future; and

WHEREAS, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City streets and roads are in an good condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a excellent condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE, IT IS HEREBY RESOLVED, ORDERED, AND FOUND by the City Council of the City of Montclair, State of California, as follows:

1. The foregoing recitals are true and correct.
2. The following list of newly proposed projects will be funded in-part or solely with Fiscal Year 2021-2022 Road Maintenance and Rehabilitation Account revenues:

Project Title: Ramona Avenue and Howard Street Roundabout Project
Project Description: Construct a traffic calming roundabout and refuge island; high visibility crosswalks; ADA compliant curb ramps; and include intersection lighting
Project Location: Intersection of Ramona Avenue and Howard Street

Estimated Project Schedule: Start (06/22)- Completion (09/22) based on the component being funded with RMRA funds
Estimated Project Useful Life: 50 years

3. The following previously proposed and adopted projects may also utilize Fiscal Year 2021-2022 Road Maintenance and Rehabilitation Account revenues in their delivery. With the relisting of these projects in the adopted fiscal year resolution, the City is reaffirming to the public and the State our intent to fund these projects with Road Maintenance and Rehabilitation Account revenues:

Project Title: North Montclair Traffic Signal Interconnect Project (Design Only)
Project Description: complete a design of the City's traffic signal interconnect system allowing for a fiber optic signal connection from City Hall to all traffic signals north of the Interstate 10 freeway.
Project Location: North of the Interstate 10 freeway between Mills Avenue and Benson Avenue.
Estimated Project Schedule: Start (11/2021)- Completion (06/22) based on the component being funded with RMRA funds
Estimated Project Useful Life: 20 years

APPROVED AND ADOPTED this XX day of XX, 20XX.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3301 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, 20XX, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE: AUGUST 2, 2021 **FILE I.D.:** STB300-17
SECTION: CONSENT - RESOLUTIONS **DEPT.:** FINANCE
ITEM NO.: 2 **PREPARER:** C. GRAVES
SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 21-3314 AUTHORIZING PLACEMENT OF ASSESSMENTS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 21-3314 authorizing placement of assessments on certain properties for delinquent sewer and trash accounts. There are 212 outstanding liens on properties for collection of delinquent civil debts owed to the City for sewer and trash service. Placement of assessments on these properties would assist in more timely collection of these delinquent accounts.

A copy of proposed Resolution No. 21-3314 is attached for City Council review and consideration.

BACKGROUND: The City Council authorized the placement of 337 liens on properties for delinquent sewer and trash charges on the following dates:

<u>Date</u>	<u>No. of Liens</u>
June 7, 2021	172
July 22, 2021	<u>165</u>
Total	337

Of these 337 liens, 125 have been cleared. It is recommended that assessments, which are collected with the property tax, be placed on the properties where the 212 unpaid liens remain. This would result in more timely collection of the delinquencies than the lien process, which generates payment only upon sale or refinancing of the property.

In addition to the regular bimonthly billings, the City has sent bimonthly letters to these property owners advising them of their delinquencies. They received notification when the liens were placed and were again notified on July 12, 2021, that the action proposed this evening would be considered by the City Council.

FISCAL IMPACT: Recoverable amount is \$161,291.22.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3314 authorizing placement of assessments on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 21-3314

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING PLACEMENT OF ASSESSMENTS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes various methods by which delinquent civil debts may be collected including, but not limited to, the placement of assessments on the properties on which the debts were generated; and

WHEREAS, City Council has recently placed 337 property liens on properties on which there are delinquent civil debts for unpaid sewer and trash charges; and

WHEREAS, the lien amount was paid on 125 of these liens; and

WHEREAS, it is appropriate to also place assessments on these properties where the 390 liens remain outstanding as identified on Exhibit A of this Resolution to further encourage the payment of these charges owed to the City; and

WHEREAS, the owners of these properties have received notification of proposed actions against their properties including the date and time when such action would be considered by the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair does hereby approve the placement of assessments on the properties and in the amounts specified in Exhibit A, entitled "August 2021 – Property Assessments."

BE IT FURTHER RESOLVED that the City Clerk is authorized to provide the San Bernardino County Assessor's Office with the documents required to cause such assessments to be placed.

APPROVED AND ADOPTED this XX day of XX, 2021.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3314 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, 2021, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

Exhibit A to Resolution No. 21-3314
August 2021 - Property Assessments

Street No.	Street	Account Type	Total Assessment Amount
4237	3rd Street	Residential	449.91
4334	Alamitos Street	Residential	311.60
4590	Alamitos Street	Residential	398.64
5356	Alamitos Street	Residential	863.17
4587	Allesandro Street	Residential	829.53
4667	Allesandro Street	Residential	875.20
9727	Amherst Avenue	Residential	332.40
9757	Amherst Avenue	Residential	674.00
9910	Amherst Avenue	Residential	875.20
11141	Amherst Avenue	Residential	899.13
5363	Arrow Hwy	Commercial	698.80
4434	Bandera Street	Multifamily	1,699.06
5065	Bandera Street	Residential	865.06
5598	Bandera Street	Residential	865.95
9950	Bel Air Avenue	Residential	838.14
10145	Bel Air Avenue	Residential	903.13
4460	Benito Street	Residential	875.20
5233	Benito Street	Senior	757.01
5429	Benito Street	Residential	875.20
5598	Benito Street	Residential	882.76
9656	Benson Avenue	Residential	877.90
4797	Berkeley Street	Residential	674.00
5382	Berkeley Street	Residential	875.20
5392	Berkeley Street	Residential	839.10
9598	Bolton Avenue	Residential	875.20
4541	Bonnie Brae Street	Residential	875.20
11339	Brunswick Lane	Residential	490.37
11457	Brunswick Lane	Residential	513.87
9851	Camarena Avenue	Residential	864.40
5448	Cambridge Street	Residential	903.85
5471	Cambridge Street	Residential	878.40
9151	Camulos Avenue	Residential	1,143.35
9213	Camulos Avenue	Senior	502.24
9242	Camulos Avenue	Residential	814.12
9243	Camulos Avenue	Residential	875.20
9511	Camulos Avenue	Residential	954.00
9737	Camulos Avenue	Residential	875.20
9877	Camulos Avenue	Residential	934.28
10189	Camulos Avenue	Residential	674.00
10213	Camulos Avenue	Residential	553.20
10259	Camulos Avenue	Residential	903.13
11409	Cannery Row	Residential	466.10
4924	Canoga Street	Residential	903.13
4912	Carlton Street	Residential	749.90
9528	Carrillo Avenue	Senior	459.92
11178	Carrillo Avenue	Residential	903.13
9845	Central Avenue	Residential	515.08
4337	Clair Street	Residential	712.63
5230	Clair Street	Residential	891.13
9795	Coalinga Avenue	Residential	875.20
9824	Coalinga Avenue	Senior	394.18
10164	Coalinga Avenue	Residential	837.60
10231	Coalinga Avenue	Residential	645.76
11148	Coalinga Avenue	Residential	877.90
11362	Cumberland Lane	Residential	642.49
11370	Cumberland Lane	Residential	642.49

Exhibit A to Resolution No. 21-3314
August 2021 - Property Assessments

Street No.	Street	Account Type	Total Assessment Amount
11469	Cumberland Lane	Residential	490.37
11333	Dartmouth Lane	Residential	641.77
10190	Del Mar Avenue	Residential	903.13
10236	Del Mar Avenue	Residential	901.93
4405	Denver Street	Residential	966.19
5616	Denver Street	Residential	875.20
4506	Donner Court	Residential	891.36
4526	Donner Court	Residential	387.66
5429	El Morado Street	Residential	863.58
11159	Essex Avenue	Residential	903.15
4705	Evert Street	Residential	865.93
4114	Faircove Court	Residential	630.39
4219	Fauna Street	Residential	903.13
4256	Fauna Street	Residential	311.60
4291	Fauna Street	Residential	903.13
4456	Fauna Street	Senior	761.97
4703	Fauna Street	Residential	903.13
4738	Fauna Street	Residential	865.92
4852	Fauna Street	Residential	893.41
8919-21	Felipe Avenue	Multifamily	1,699.06
9874	Felipe Avenue	Residential	1,080.95
10232	Felipe Avenue	Residential	505.25
10260	Felipe Avenue	Senior	581.09
4660	Flora Street	Senior	566.61
5051	Flora Street	Residential	893.60
9020	Fremont Avenue	Senior	873.29
9567	Fremont Avenue	Residential	954.28
9823	Fremont Avenue	Residential	851.20
10253	Fremont Avenue	Residential	673.50
10287	Fremont Avenue	Residential	977.32
10149	Galena Avenue	Residential	307.58
9985	Geneva Avenue	Residential	888.28
10057	Geneva Avenue	Residential	674.00
4307	Granada Street	Residential	495.31
4328	Granada Street	Residential	875.20
4436	Granada Street	Residential	317.56
3792	Hampton Drive	Residential	473.71
5234	Hanover Way	Residential	331.74
4376	Harvard Street	Residential	613.60
4418	Harvard Street	Residential	837.65
5430	Harvard Street	Residential	538.57
5462	Harvard Street	Residential	877.27
9075	Helena Avenue	Residential	455.20
4611	Highland Street	Senior	610.30
4520	Holt Blvd.	Commercial	355.60
4103	Howard Street	Residential	903.13
4597	Howard Street	Residential	481.72
4705	Howard Street	Residential	447.31
5190	Howard Street A & B	Multifamily	1,819.30
4585	James Street	Residential	925.89
10236	Kimberly Avenue	Residential	698.08
10244	Kimberly Avenue	Residential	598.16
4490	Kingsley Street	Residential	714.40
4671	Kingsley Street	Multifamily	1,686.73
4724	Kingsley Street	Residential	876.24
5019	Kingsley Street	Residential	903.13

Exhibit A to Resolution No. 21-3314
August 2021 - Property Assessments

Street No.	Street	Account Type	Total Assessment Amount
5476	Kingsley Street	Residential	877.89
11362	Kingston Lane	Residential	283.46
10360-62	Lehigh Avenue	Multifamily	1,706.33
10390-92	Lehigh Avenue	Multifamily	1,675.06
9884	Lindero Avenue	Residential	358.45
10041	Lindero Avenue	Residential	863.21
10042	Lindero Avenue	Residential	443.00
4846	Mane Street	Residential	729.71
9527	Marion Avenue	Residential	875.20
9547	Marion Avenue	Residential	794.80
9595	Mills Avenue	Residential	736.20
9969	Mills Avenue	Residential	311.60
10189	Mills Avenue	Residential	303.20
10231	Mills Avenue	Residential	903.13
11365	Millstone Lane	Residential	642.89
11458	Millstone Lane	Residential	475.08
5239	Monte Verde Street	Residential	903.13
9056	Monte Vista Avenue	Residential	852.41
10332	Monte Vista Avenue	Residential	832.25
10489	Monte Vista Avenue	Residential	3,527.94
11007	Monte Vista Avenue	Residential	629.88
11313	Monte Vista Avenue	Residential	313.00
10163	Oak Glen Avenue	Residential	819.21
10176	Oak Glen Avenue	Senior	499.75
4595	Oakdale Street	Residential	723.28
4644	Olive Street	Residential	872.30
4684	Olive Street	Residential	838.00
5171	Orchard Street	Senior	721.62
5422	Orchard Street	Residential	903.13
5690	Orchard Street	Residential	875.20
3765	Peachwood Drive	Residential	491.29
9925	Poulsen Avenue	Residential	674.00
10154	Poulsen Avenue	Residential	865.93
9375	Pradera Avenue	Senior	3,514.77
10206	Pradera Avenue	Residential	878.93
4833	Princeton Street	Residential	462.88
4846	Princeton Street	Residential	916.97
9060	Ramona Avenue	Residential	849.76
9090	Ramona Avenue	Residential	829.91
9109	Ramona Avenue	Residential	311.60
9551	Ramona Avenue	Residential	329.00
4668	Rawhide Street	Residential	903.13
11441	Rockford Lane	Residential	361.31
5090	Rodeo Street	Residential	899.25
9413	Rose Avenue	Residential	336.15
9434	Rose Avenue	Residential	875.20
9720	Rose Avenue	Residential	929.96
9866	Rose Avenue	Senior	794.21
9966	Rose Avenue	Residential	837.94
5361	Rosewood Street	Residential	906.70
11076	Roswell Avenue	Residential	610.20
4164	Rudisill Street	Residential	513.32
5360	Rudisill Street	Residential	967.25
4711	San Bernardino Street	Residential	875.20
4749	San Bernardino Street	Residential	730.40
4786	San Bernardino Street	Residential	674.00

Exhibit A to Resolution No. 21-3314
August 2021 - Property Assessments

Street No.	Street	Account Type	Total Assessment Amount
4844	San Bernardino Street	Residential	925.70
5489	San Bernardino Street	Residential	781.96
5422	San Jose Street	Residential	793.06
5433	San Jose Street	Residential	553.20
5453	San Jose Street	Residential	311.60
5412	San Jose Street #1	Residential	284.81
4424	San Jose Street #14	Residential	586.08
4424	San Jose Street #18	Residential	875.20
4424	San Jose Street #27	Residential	805.20
4622	San Jose Street O	Residential	509.24
4622	San Jose Street R	Residential	452.72
4622	San Jose Street U	Residential	394.35
4622	San Jose Street W	Residential	298.48
10943	San Juan Way	Residential	326.66
11052	San Juan Way	Residential	877.93
11014	San Miguel Way	Residential	903.13
11020	San Pasqual Avenue	Residential	1,046.35
10016	Santa Anita Avenue	Residential	914.11
10046	Santa Anita Avenue	Residential	424.00
10163	Santa Anita Avenue	Residential	891.83
10221	Santa Anita Avenue	Residential	583.33
10817	Silicon Avenue	Residential	287.12
11054	Stagecoach Avenue	Residential	903.13
11011	Streetallion Avenue	Residential	879.13
4761	Streetate Street	Commercial	511.36
4773	Streetate Street	Residential	393.28
9862	Steamboat Drive	Residential	430.41
9866	Steamboat Drive	Senior	767.55
9514	Surrey Avenue	Residential	341.03
9617	Surrey Avenue	Residential	875.20
9824	Surrey Avenue	Senior	556.94
9773	Tudor Avenue	Residential	576.04
10289	Tudor Avenue	Residential	879.13
9966	Vernon Avenue	Senior	372.50
10236	Vernon Avenue	Residential	1,026.68
10241	Vernon Avenue	Residential	686.08
10431	Vernon Avenue	Residential	865.84
4230	Via Amore	Residential	865.48
10438	Via Palma	Residential	311.60
11024	Whitewater Avenue	Senior	371.11
11178	Whitewater Avenue	Residential	889.56
5405	Yale Street	Residential	725.31
4515	Yosemite Drive	Residential	889.93
10474	Yosemite Drive	Residential	311.60
		Total:	\$161,291.22

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
JULY 19, 2021, AT 6:30 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 6:30 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of June 21, 2021.

Moved by Council Member Johnson, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of June 21, 2021.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

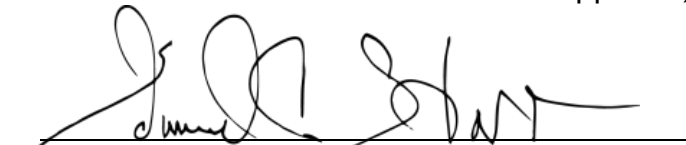
At 6:31 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:58 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Ruh stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 6:58 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, JULY 19, 2021 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor/Chair Dutrey called the meeting to order at 7:00 p.m.

II. INVOCATION

The invocation was given by **Minister Jimmy Crowell, Calvary Montclair.**

III. PLEDGE OF ALLEGIANCE

Mayor Pro Tem/Vice Chair Ruh led meeting participants in the Pledge.

Mayor/Chair Dutrey requested a moment of silence in memory of former Mayor **Paul M. Eaton**, who passed away three years ago.

IV. ROLL CALL

Present: Mayor/Chair Dutrey; Mayor Pro Tem/Vice Chair Ruh; Council Members/Directors Johnson and Martinez

City Manager/Executive Director Starr; Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; Finance Manager Kulbeck; Senior Management Analyst Fuentes; City Attorney Robbins; City Clerk Myrick

Absent: Council Member/Director Lopez (arrived at 7:25 p.m.)

V. PRESENTATIONS

A. **Community Activities Commission Presentation of 2021 Home Beautification Awards**

Community Activities Commissioner Darlene Ferraro stated the CAC has sponsored the *Home Beautification Awards* program over the past 26 years to recognize Montclair residents who demonstrate community pride by attractively maintaining their homes. She noted this year the CAC selected two winners, who should be proud of the work they have done to maintain their homes. She thanked all residents who help make Montclair a beautiful community.

A brief PowerPoint presentation showcased photos of the finalists' residences. The **Ramirez** Family, 4882 Olive Street, was praised for its beautiful traditional landscaping including miniature palm trees, a red brick and stone fence lined with flower beds, and a private front garden oasis with benches and a three-tiered water fountain; and **Mr. Javier Alvarez**, 5449 Granada Street, was commended for his drought-tolerant landscaping. The winners were presented with *Home of the Year Award* certificates and gift certificates to **Los Portales Mexican Grille Restaurant**.

Mayor Dutrey congratulated the winners and thanked all residents who have contributed to the beautification of Montclair. He thanked the CAC for organizing and facilitating the program.

VI. PUBLIC COMMENT

- A. **Mr. Bruce Culp**, resident, expressed his support for the Pacific Electric Trail bridge replacement, noting the trail is important to the region. He also offered his support to the unvaccinated, thanked those who have been vaccinated, and urged those who are unsure to talk to their doctors about the vaccine.

VII. PUBLIC HEARINGS

A. Consider Adoption of Resolution No. 21-3311 Approving Tentative Tract Map No. 20384 to Create 20 Industrial Condominiums at 10680 Silicon Avenue within the "M-1" Limited Manufacturing Zone

Mayor Dutrey declared it the time and place for a public hearing related to Resolution No. 21-3311 and invited members of the audience to provide comments.

Mr. Richard Held stated he lives next door to the subject property and supports approval of the project, noting it has been a vacant lot for a very long time.

Mr. Bruce Culp spoke in support of the project.

There being no more members of the audience requesting to speak, Mayor Dutrey closed the public hearing.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried 4-0-1 (Lopez absent), the City Council adopted Resolution No. 21-3311 approving Tentative Tract Map No. 20384 to create 20 industrial condominiums at 10680 Silicon Avenue within the "M-1" Limited Manufacturing Zone.

Council Member/Director Lopez arrived at 7:25 p.m.

VIII. CONSENT CALENDAR

Council Member Johnson pulled Item B-10 and noted her abstention on Items C-8 and C-9 due to a conflict of interest.

Mayor Dutrey stated he would like to abstain on the vote for Item A-1 because he was not in attendance at the meeting.

Mayor Pro Tem Ruh requested to abstain from voting on Item A-3, also due to his absence from the meeting.

Moved by Mayor/Chair Dutrey, seconded by Council Member/Director Johnson, and carried unanimously 5-0, the City Council approved the remainder of the Consent Calendar as presented:

A. Approval of Minutes

1. Regular Joint Meeting — June 21, 2021

The City Council, Successor Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners, and Montclair Community Foundation Board of Directors approved the minutes of the June 21, 2021 regular joint meeting by a 4-0-1 vote (Dutrey abstained).

2. Adjourned Joint Meeting — June 28, 2021

The City Council and Montclair Housing Corporation Board of Directors approved the minutes of the June 28, 2021 adjourned joint meeting.

Council Member Lopez pointed out he has still not received a list of all part-time benefitted employees that he had requested during this meeting, as noted in the minutes.

3. Special Joint Meeting — June 30, 2021

The City Council and Montclair Housing Corporation Board of Directors approved the minutes of the June 30, 2021 special joint meeting by a 4-0-1 vote (Ruh abstained).

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending June 30, 2021.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated July 5, 2021, totaling \$991,964.40 and July 19, 2021 totaling 620,232.35; and the Payroll Documentation dated June 6, 2021, amounting to \$589,092.40 gross, with \$406,902.66 net being the total cash disbursement; and June 20, 2021 amounting to \$731,544.63 gross, with \$488,562.86 net being the total cash disbursement.

3. Receiving and Filing of Successor Agency Treasurer's Report

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the Redevelopment Agency Treasurer's Report for the month ending June 30, 2021.

4. Approval of Successor Agency Warrant Register

The City Council acting as successor to the Redevelopment Agency Board approved the Successor to the Redevelopment Agency Warrant Register dated 06.01.21-06.30.21 in the amounts of \$7,299.49 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending June 30, 2021.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 06.01.21-06.30.21 in the amount of \$43,486.07.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending June 30, 2021.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 06.01.21-06.30.21 in the amount of \$0.00.

9. Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project Determining There is a Need to Continue the Action

The City Council received and filed a status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project and determined there is a need to continue the action.

C. Agreements

1. Approval of *Agreement No. 21-37* with Atkinson, Andelson, Loya, Ruud & Romo to Provide Legal and Consulting Services Related to Litigation and Employee Relations Matters, and Authorizing City Manager Edward C. Starr to Sign Said Agreement

The City Council approved *Agreement No. 21-37* with Atkinson, Andelson, Loya, Ruud & Romo to provide legal and consulting services related to litigation and employee relations matters, and authorized City Manager Edward C. Starr to sign said agreement.

2. Approval of *Agreement No. 21-39* with Misha L. Penn to Provide Grant Management and Fiscal Compliance Services for the Human Services Department

The City Council approved *Agreement No. 21-39* with Misha L. Penn to provide grant management and fiscal compliance services for the Human Services Department.

3. Approval of Agreement No. 21-40 with Suzanne Yoakum to Provide Case Management Services for the Senior Center

The City Council approved *Agreement No. 21-40* with Suzanne Yoakum to provide case management services for the Senior Center.

4. Approval of Agreement No. 21-41 with Ontario-Montclair School District to Provide a Licensed Clinical Social Worker for the Case Management Program

The City Council approved *Agreement No. 21-41* with Ontario-Montclair School District to provide a Licensed Clinical Social Worker for the case management program.

5. Approval of Agreement No. 21-42 with the San Bernardino County Department of Aging and Adult Services to Support Senior Center Activities and the Senior Transportation Program

The City Council approved *Agreement No. 21-42* with the San Bernardino County Department of Aging and Adult Services to support Senior Center activities and the Senior Transportation Program.

6. Approval of Agreement No. 21-46 with the Montclair Chamber of Commerce to Provide Services to Promote Local Economic Development

The City Council approved *Agreement No. 21-46* with the Montclair Chamber of Commerce to provide services to promote local economic development.

7. Approval of Agreement No. 21-48 with AARP to Accept an Award for the 2021 Community Challenge Grant to Enhance the Montclair Community Garden

The City Council approved *Agreement No. 21-48* with AARP to accept an award for the 2021 Community Challenge Grant to enhance the Montclair Community Garden.

8. Approval of Agreement No. 21-49 with Ontario-Montclair School District to Support the Montclair After-School Program

The City Council approved *Agreement No. 21-49* with Ontario-Montclair School District to support the Montclair After-School Program by a 4-0-1 vote (Johnson abstained).

9. Approval of Agreement No. 21-50 with Ontario-Montclair School District to Support the Montclair After-School Summer Expanded Learning Program

The City Council approved *Agreement No. 21-50* with Ontario-Montclair School District to support the Montclair After-School Summer Expanded Learning Program by a 4-0-1 vote (Johnson abstained).

10. Approval of Agreement No. 20-51 with Civic Publications, Inc., to Provide Public Education and Community Outreach Services

The City Council approved *Agreement No. 20-51* with Civic Publications, Inc., to provide public education and community outreach services.

D. Resolutions

1. Adoption of Resolution No. 21-3315 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges

The City Council adopted Resolution No. 21-3315 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

IX. PULLED CONSENT CALENDAR ITEMS

B. Administrative Reports

10. Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule

Council Member Johnson asked if the City could store records electronically to eliminate the need to store paper records.

City Manager Starr advised the City is in the process of transitioning to mostly electronic records; however, the City does not have a dedicated staff member to digitize older records that are in storage.

Council Member Lopez stated Page 3 of the Finance Department records lists a box of credit card receipts that covers the period 2019 to 2020, but the listed retention period is noted as four years past audit. He stated he does not believe those records should be destroyed at this time.

Mayor Dutrey asked if receipts are duplicate records that can be obtained from the bank.

City Manager Starr indicated they are receipt copies.

Moved by Council Member Johnson, seconded by Mayor Dutrey, and carried by a 4-1 vote (Lopez in opposition), the City Council authorized the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

X. COMMUNICATIONS

A. Department Reports

1. Police — Firework Enforcement Detail & National Night Out

Lieutenant Kumanski reported on the firework enforcement detail, which resulted in a significant reduction in firework incidents compared to 2019 and 2020. He advised the effort took a holistic approach that included advertisement of the City's ban on fireworks, warning notices, increased patrols leading up to and on the Independence Day holiday, and an online reporting tool for residents. He advised the effort was a collaboration between the Police and Fire Departments and the Code Enforcement Division.

Council Member Lopez stated he is happy to see the numbers are lower this year and commended Fire Department staff for patrolling as well, noting there were four to five fires resulting from fireworks. He thanked police officers for assisting with evacuations near those fires.

Mayor Pro Tem Ruh thanked Police, Fire, Code Enforcement, and all staff involved in the firework patrols and other prevention efforts.

Council Member Johnson stated she was pleasantly surprised with how effective the detail was in suppressing firework activities, noting she did not think there would be much of a difference when it was first discussed a couple months ago.

Mayor Dutrey listed the various methods used including advertising via social media.

Lieutenant Kumanski announced that next week on Tuesday, August 3, 2021, from 6:30 to 9:30 p.m. at **Alma Hofman Park**, the Police Department would be hosting the National Night Out event after a one-year hiatus due to the pandemic. He noted there would be food sales, community partners, and a 7:30 p.m. showing of the **Disney** movie **Frozen II**.

2. **Human Services — Summer Concerts & Movies in the Park**

Director of Human Services Richter stated the summer concert and movie series got off to a great start last week with **Cold Duck**, a top 40s and old school classics cover band. She invited the community to join the City at Alma Hofman Park on Tuesday evenings this summer, noting tomorrow's event will feature the movie **Raya and the Last Dragon** at sunset.

She also announced the Senior Center will tentatively reopen on Monday, August 2, at 11:00 a.m. for in-person dining during the senior lunch, with vaccinated and unvaccinated seating areas and with all being required to wear a mask until their meal is served. She advised to-go meals are also available for those who are not comfortable with dining in just yet. She also stated the Senior Center is in need of vaccinated volunteers for the senior lunch program.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session for conference with legal counsel regarding the following matters:

1. **Closed Session Pursuant to Government Code Section 54957.6 Regarding Conference with City's Designated Labor Negotiator Edward C. Starr**

Agency: City of Montclair
Employee Management, Montclair City Confidential
Organizations: Employees' Assoc., Montclair General Employees' Assoc., Montclair Fire Fighters' Assoc., and Montclair Police Officers' Assoc.

2. **Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations**

Property: 9143 Monte Vista Ave., Montclair (APNs 1008-171-04 and -05)
City Negotiator: Edward C. Starr, City Manager
Negotiating Parties: City of Montclair and Tan Family Living Trust
Under Negotiations: Recommendations Regarding Purchase Price.

C. City Manager/Executive Director

City Manager/Executive Director Starr advised a \$540 million trailer bill is making its way to **Governor Newsom's** desk to fund **the Gold Line's** completion to Montclair. He noted funding must be secured before October 7th in order to remain a part of the current project; otherwise, the extension would need to be re-bid as a separate project at a significantly higher cost. He stated if the funding is approved in time, the Montclair segment could be completed as soon as 2026.

D. Mayor/Chair

1. Mayor/Chair Dutrey made the following comments:
 - (a) He attended the installation of the new **Montclair Chamber of Commerce** Board of Directors and officers on July 8th.
 - (b) He attended the **Lucky Art Crayonology** grand opening event on Saturday, July 10th. He encouraged those with young children to visit, noting there are several fun activities and games for kids.
 - (c) He boasted that 60 percent of adult Montclair residents have been vaccinated, and that 70 percent of individuals over age 60 have been vaccinated in the County.

E. City Council/Successor Agency Board/MHC Board/MHA Board/MCF Board

1. Council Member/Director Martinez stated she is overjoyed that the concerts and movies in the park are happening this year, noting it is a great family event for all ages, and that even her teenage sister is excited to go.
2. Council Member/Director Johnson made the following comments:
 - (a) She stated she learned so much about crayons at the **Lucky Art Crayonology** grand opening event and noted even the adults were having a great time.
 - (b) She advised the Chamber would be holding a drive-thru e-waste event this coming weekend—Saturday and Sunday, July 24th and 25th, from 9:00 a.m. to 2:00 p.m. at the Chamber office, 8880 Benson Avenue, Suite 10.
3. Council Member/Director Lopez made the following comments:
 - (a) He thanked Code Enforcement, Police, and Fire for their work to make their combined firework enforcement efforts a success.
 - (b) He asked if the City is charged a fee for job postings on the **National Testing Network** website.

Director of Administrative Services and Human Resources Hamilton stated he would need to check the contract for the fee schedule.

He asked if the job postings could indicate whether they have closing deadlines or are ongoing recruitments.

Mayor Dutrey asked Council Member Lopez to discuss his concerns with staff privately regarding the recruitment process and if the issues cannot be resolved the City Council can put it on a future agenda for discussion.
 - (c) He stated his concerns regarding a City policy requiring employees to reveal their vaccination status in order to obtain a sticker on their ID badge and be allowed to go maskless, noting he feels it is an invasion of privacy. He stated he would like to have the matter addressed tonight because there is a deadline of July 22nd for staff to get their stickers and he feels it could become a liability issue for the City.

Mayor Dutrey asked City Attorney Robbins whether this matter could be discussed during the meeting in open or closed session.

City Attorney Robbins indicated the matter being discussed does pertain to City business and should be on the agenda to hold further discussion.

Mayor Dutrey requested it be on the agenda at the next meeting during closed session as a matter of potential litigation. He added there is a grievance process staff and labor groups should use when they have issues with City policies or working conditions, and if the matter is urgent they could address a written memo to the City Council and City Manager stating their concerns.
4. Mayor Pro Tem/Vice Chair Ruh made the following comments:
 - (a) He thanked Code Enforcement, Police, and Fire personnel.
 - (b) He warned the Delta variant of the coronavirus is on the rise, and that the groups most affected are between the ages of 18 and 40.

- (c) He congratulated returning Community Activities and Planning Commissioners, and welcomed the City's new Planning Commissioner, **Mr. Krishna Patel**.
- (d) He noted the funding gap was discussed at the last Gold Line Joint Powers Authority meeting and emphasized the regional support for the funding bill's passage.
- (e) He stated he regretfully could not attend the Chamber installation event and congratulated all new Board Members.
- (f) He thanked all employees and departments for coming together during the pandemic to ensure City services continue for residents.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of June 21, 2021

The City Council received and filed the minutes of the Personnel Committee meeting of June 21, 2021, for informational purposes.

XI. CLOSED SESSION

At 8:25 p.m., the City Council went into closed session to discuss labor negotiations and real property negotiations.

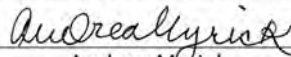
XII. CLOSED SESSION ANNOUNCEMENTS

At 9:15 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor and real property negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 9:15 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

Submitted for City Council/Successor Agency Board/Montclair Housing Corporation Board/Montclair Housing Authority Commission/Montclair Community Foundation Board approval,



Andrea Myrick
City Clerk