

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

AGENDA

Monday, October 18, 2021
7:00 p.m.

Location

Council Chamber
5111 Benito Street
Montclair, CA 91763

Webinar Link

<https://zoom.us/j/95239872725>

Dial #

1-669-900-6833

Meeting ID

952-3987-2725



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, MONTCLAIR COMMUNITY FOUNDATION, AND
MONTCLAIR PUBLIC FINANCING AUTHORITY**

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

Monday, October 18, 2021
7:00 p.m.

Remote Participation Information:

Zoom Link: <https://zoom.us/j/95239872725>

Dial Number: 1-(669)-900-6833

Meeting ID: 952-3987-2725

*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.*

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]
Montclair Public Financing Authority [MPFA]

II. INVOCATION

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

- A. COVID-19 Community Recognition Award
B. Introduction of New Public Works Director/City Engineer

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

A. Approval of Minutes

- 1. Regular Joint Meeting — October 4, 2021 [CC/SA/MHC/MHA/MCF] 100

B. Administrative Reports

- 1. Consider Receiving and Filing of Treasurer’s Report [CC] 5
- 2. Consider Approval of Warrant Registers & Payroll Documentation [CC] 6
- 3. Consider Receiving and Filing of Treasurer’s Report [SA] 7
- 4. Consider Approval of Warrant Register [SA] 8
- 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 9
- 6. Consider Approval of Warrant Register [MHC] 10
- 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 11
- 8. Consider Approval of Warrant Register [MHA] 12
- 9. 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] 13
- 10. Consider Approval of the Filing of a Notice of Completion with the San Bernardino County Recorder for the Central Avenue Rehabilitation Phase 1 Project Constructed by Sully Miller Contracting Company [CC]
Consider Release of Retention of Payment Bond 30 Days After Recordation of Notice of Completion [CC] 15
- 11. Consider Approval of a Grant Fund Balance Carryover of \$452,205.51 from Fiscal Year 2021-22 for the Montclair After-School Program [CC] 17

C. Agreements

- 1. Consider Approval of Agreement No. 21-23 with Crossroads Software Inc. for Digital Collision Reporting Software [CC]
Consider Approval of Agreement No. 21-24 with Lexisnexis Coplogic Solutions Inc. for Integration of Crossroads Software with the Existing Coplogic Desk Officer Reporting System for Online Crime Reporting Services [CC]
Consider Authorizing a \$5,900 Appropriation from the Prop 30/AB 109 Fund to Pay the Costs Associated with Agreement No. 21-23 [CC] 18
- 2. Consider Approval of Agreement No. 21-58-I-100, an Irrevocable Annexation Agreement with J2 Express, LLC for 10955-10973 Central Avenue, Montclair, CA 91762 (APN 1011-341-51-0-000) [CC] 25
- 3. Consider Approval of Agreement No. 21-64 with Chaffey Joint Union High School District for Specialized Law Enforcement Services During Fiscal Year 2021-22 [CC] 31

4. Consider Approval of Agreement No. 21-65, a Participation Agreement with Metro Honda and Montclair Dealership Group Properties, LLC Offering City Assistance in the Amount of \$375,000 Toward the Design, Construction, and Installation of a Conforming, Interstate-10 Freeway-Adjacent Pylon Electronic Message Center (EMC) Sign in the City of Montclair, for which the City Shall Receive Certain Benefits Including Rights to Fifteen Percent of the EMC Sign's Operational Time During Each Twenty-Four Hour Period to Advertise Community-Related, Public Safety, Public Health, and Public Relations Messages; the Continued Operation of the Honda and Acura New Car Dealerships in the City During the Term of the Agreement; the Generation of Additional Property Tax Increment and Sales Tax Income to the City; and the Non-Binding Cooperation of the Nissan New Car Dealership to Continue Operating in the City Through Incentivization by Extension of a Credit Against the Promissory Note Amount of \$375,000 [CC]

Consider Approval of Conditions, Covenants and Restrictions as Contained in the Owner Declaration (Attachment No. 1 to Agreement No. 21-65) to Set Forth, in Recordable Form, Certain Obligations of Metro Honda and Montclair Dealership Group Properties, LLC [CC]

Consider Approval of the Terms, Conditions and Provisions as Contained in the Promissory Note (Attachment No. 2 to Agreement No. 21-65) [CC]

Consider Allocating up to \$375,000 from the Economic Development Fund in the General Fund as the City Disbursement Amount for the City's Cost Share of Agreement No. 21-65 [CC]

Consider Authorizing the City Manager to Execute Participation Agreement No. 21-65, Owner Declaration, and Promissory Note [CC]

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D. Resolutions

1. Consider Adoption of Resolution No. 21-3324 Making Factual Findings in Compliance with Ab 361 and Establishing Procedures for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies, Including the COVID-19 Public Health Emergency, for the Period of October 18, 2021 Through November 17, 2021 [CC]

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IX. PULLED CONSENT CALENDAR ITEMS

X. COUNCIL WORKSHOP

- A. David Turch & Associates, Federal Legislative Advocate Presentation

(The City Council may consider continuing this item to an adjourned meeting on Monday, November 1, 2021, at 5:45 p.m.)

XI. COMMUNICATIONS

- A. Department Reports

1. Human Services Department — Upcoming Holiday Programs & Events

- B. City Attorney

- C. City Manager/Executive Director

- D. Mayor/Chairperson

- E. Council Members/Directors

F. Committee Meeting Minutes <i>(for informational purposes only)</i>	
1. Public Works Committee Meeting — April 15, 2021 [CC]	93
2. Real Estate Committee Meeting — May 17, 2021 [CC]	97
3. Personnel Committee Meeting — October 4, 2021 [CC]	99

XII. 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, November 1, 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 the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to cityclerk@cityofmontclair.org to request 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. Myrick, 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, October 14, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending September 30, 2021.

BACKGROUND: Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2021.

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

RECOMMENDATION: Staff recommends the City Council receive and file the Treasurer's Report for the month ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	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 October 18, 2021, and the Payroll Documentation dated September 12, 2021, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated October 18, 2021, totals \$1,039,200.47.

The Payroll Documentation dated September 12, 2021 totals \$643,426.70 gross, with \$448,831.69 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:	OCTOBER 18, 2021	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending September 30, 2021.

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

RECOMMENDATION: Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 09.01.21-09.30.21 in the amounts of \$8,219.06 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2021.

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

RECOMMENDATION: Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 09.01.21–09.30.21 in the amount of \$52,589.10 for the Montclair Housing Corporation and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending September 30, 2021.

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

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

REASON FOR CONSIDERATION: The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending September 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 09.01.21-09.30.21 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

RECOMMENDATION: Vice Chair Ruh recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending September 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	TRN110A
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	9	PREPARER:	M. HEREDIA
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 No. 21-3307 was adopted declaring a need for emergency contracting procedures for the Pacific Electric (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), constructed 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 County 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.

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 continue to work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. The bridge will be fabricated by Contech Engineered Solutions. Biggs Cardosa Associates (BCA), a structural engineering consultant, will design the bridge deck and modifications to the existing

bridge substructure and foundations to accept the new bridge. Additionally, Environmental permits and studies are required to clear the project through the California Environmental Quality Act (CEQA) and U.S. Army Corps permitting process.

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 to replace the bridge through their Transportation Development Act TDA Grant Program.

October 11, 2021 Update

On June 2, 2021, the SBCTA Board of Directors authorized the release of the TDA Article 3 Call for Projects for Bicycle and Pedestrian Improvement Projects. City staff applied before the deadline of August 4, 2021, under the *maintenance of the existing facilities* category. Out of the five applicants in this category, the PE Trail Bridge Replacement was the runner-up. On October 13, 2021, the General Policy Committee recommended the award of \$227,544 in TDA Article 3 funds for the PE Trail Bridge Replacement Project. The City will cash flow the project and seek reimbursement from SBCTA at a future date.

BCA is currently reviewing shop drawing submittals from Contech Engineered Solutions, the bridge manufacturer. Once the shop drawings are approved, the steel bridge will be manufactured and delivered within 8-12 weeks, contingent on material availability.

FISCAL IMPACT: The estimated cost to replace the Pacific Electric Trail Bridge is \$450,000. SBCTA's total contribution is now \$327,544 in TDA Grant funding, and the remaining project cost will be paid using General Fund Reserves.

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



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	STA804
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	10	PREPARER:	S. STANTON

SUBJECT: CONSIDER APPROVAL OF THE FILING OF A NOTICE OF COMPLETION WITH THE SAN BERNARDINO COUNTY RECORDER FOR THE CENTRAL AVENUE REHABILITATION PHASE 1 PROJECT CONSTRUCTED BY SULLY MILLER CONTRACTING COMPANY

CONSIDER RELEASE OF RETENTION OF PAYMENT BOND 30 DAYS AFTER RECORDATION OF THE NOTICE OF COMPLETION

REASON FOR CONSIDERATION: State law requires that Notices of Completion be recorded with the County Recorder upon acceptance of a Public Works project. The City Council is requested to consider approving the filing of a Notice of Completion with the San Bernardino County Recorder and related actions concerning the Central Avenue Rehabilitation Phase 1 Project.

BACKGROUND: On June 3, 2019, Sully Miller Contracting Company was awarded a construction contract for the Central Avenue Rehabilitation Phase 1 Project and entered into Agreement No.19-40 with the City. The project included traffic signal modifications, traffic signal communication conduit, landscaping and irrigation, re-paving of Central Avenue from Phillips Street to the Interstate 10 Freeway, and new traffic striping. Sully Miller Contracting Company was awarded a construction contract for \$7,129,961.75, and the City Council authorized a construction contingency of \$700,000, bringing the total award authority to \$7,829,961.70.

During construction, there were several changes to the scope of work that ultimately resulted in multiple change orders and an overall project cost increase. The final construction cost is being finalized and will be reported to the City Council in the future. Additionally, the contractor is asking for compensation for damages it incurred due to various delays it alleges were caused by the actions of the City. The City is disputing this claim, and the matter is proceeding to mediation and possible arbitration.

FISCAL IMPACT: The final construction cost will be reported to the City Council at a future meeting.

RECOMMENDATION: Staff recommends that the City Council take the following actions related to the Central Avenue Rehabilitation Phase 1 Project:

1. Approve the filing of a Notice of Completion with the San Bernardino County Recorder for the Central Avenue Rehabilitation Phase 1 Project constructed by Sully Miller Contracting Company.
2. Authorize release of retention of payment bond 30 days after recordation of the Notice of Completion.

RECORDING REQUESTED BY:

City of Montclair

AND WHEN RECORDED MAIL DOCUMENT AND
TAX STATEMENT TO:

NAME: **City of Montclair**

STREET ADDRESS: **5111 Benito Street**

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

Government Code 6103

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

NOTICE OF COMPLETION

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

fee

The full name and address of the undersigned
is
Monica Heredia, P.E.
Public Works Director/City Engineer
5111 Benito Street
Montclair, CA 91763

The work was completed on that certain work known as:

Central Avenue Rehabilitation Phase 1 Project

for the undersigned City of Montclair,
a Municipal Corporation, on the 19th day of November 2020

The City accepted the job on the 18th day of October 2021

The Contractor on said job was
Sully-Miller Contracting Company
135 S. State College Blvd., Suite 400
Brea, CA. 92821

The improvement consisted of:

Street Improvements including traffic signal modifications, landscaping and irrigation, paving and striping.

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

9300-11400 Central Avenue, Montclair, CA. 91763

VERIFICATION

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

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

Executed on: October 18, 2021 at 5111 Benito Street, Montclair, California

Monica Heredia, P.E.
Public Works Director/City Engineer



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	HSV030/GRT125
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	11	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF A GRANT FUND BALANCE CARRYOVER OF \$452,205.51 FROM FISCAL YEAR 2021-22 FOR THE MONTCLAIR AFTER-SCHOOL PROGRAM		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of the Human Services Department's carryover of \$452,205.51 in grant funding left over from Fiscal Year 2020-21 for the Montclair After-School Program.

BACKGROUND: In prior fiscal years, the Ontario-Montclair School District (OMSD) has provided grant funding to the Human Services Department to be used toward the Montclair After-School Program. Due to atypical changes in the program necessitated by COVID-19 safety protocols, as of June 30, 2021, there was a fund balance in the amount of \$452,205.51 from the contract with OMSD to implement the After-School (Fund 1160) Grant Program. This amount does not include grant funds awarded for Fiscal Year 2021-22 by OMSD. It was essential that the use of this fund balance from prior fiscal years be utilized to support critical ongoing program needs as directed by OMSD and the California Department of Education.

FISCAL IMPACT: City Council approval of this item would allow these remaining prior fiscal year funds to be utilized to support the Human Services Department's ongoing program needs. The use of these funds will remain consistent with the intent, scope, and purpose for which the funds were originally granted. A total of \$452,205.51 will be added to the Human Services After-School Program budget.

RECOMMENDATION: Staff recommends the City Council approve a grant fund balance carryover of \$452,205.51 from Fiscal Year 2021-22 for the Montclair After-School Program.



CITY COUNCIL AGENDA REPORT

DATE: OCTOBER 18, 2021 **FILE I.D.:** PTD175
SECTION: CONSENT - AGREEMENTS **DEPT.:** POLICE
ITEM NO.: 1 **PREPARER:** B. KUMANSKI
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-23 WITH CROSSROADS SOFTWARE INC. FOR DIGITAL COLLISION REPORTING SOFTWARE

CONSIDER APPROVAL OF AGREEMENT NO. 21-24 WITH LEXISNEXIS COPLOGIC SOLUTIONS INC. FOR INTEGRATION OF CROSSROADS SOFTWARE WITH THE EXISTING COPLOGIC DESK OFFICER REPORTING SYSTEM FOR ONLINE CRIME REPORTING SERVICES

CONSIDER AUTHORIZING A \$5,900 APPROPRIATION FROM THE PROP 30/AB 109 FUND TO PAY THE COSTS ASSOCIATED WITH AGREEMENT NO. 21-23

REASON FOR CONSIDERATION: To transition collision reporting to digital format, the City Council is requested to consider approval of Agreement No. 21-23 with Crossroads Software Inc. for digital collision reporting software, and to authorize a \$5,900 appropriation from the prop 30/AB 109 fund to pay the costs associated with Agreement No. 21-23. The City Council is also requested to consider approval of Agreement No. 21-24 with LexisNexis Coplogic Solutions Inc. for integration of Crossroads with our existing Coplogic Desk Officer Reporting System for online crime reporting services.

Proposed Agreement No. 21-23 with Crossroads Software Inc. and Proposed Agreement No. 21-24, with LexisNexis Coplogic Solutions Inc., which includes “Order No. 2 eCommerce Services,” were reviewed and found acceptable to staff and the City Attorney and are attached for the City Council’s review and consideration.

BACKGROUND: For decades, the Montclair Police Department has relied on collision reporting forms printed by the California Highway Patrol (CHP). The information on these forms is standardized for the entire State for uniformity in reporting and is based on the Vehicle Code, the State Department of Transportation, the US Department of Transportation, and the California Statewide Integrated Traffic Records System (SWITRS). Over 20 years ago, CHP created a digital version of these collision forms. The system mirrored the CHP print forms and was updated regularly for compatibility and was offered for free to other law enforcement agencies. The Department’s Major Accident Investigation Team has used this program previously. Unfortunately, CHP stopped supporting the program approximately 10 years ago and there have been no further updates. The software has compatibility issues with the current version of Windows and Microsoft Office (the software upon which it relies), and the method it utilizes to save and store the reports is machine-specific, which is not ideal for records retention.

Crossroads Software Inc. is a software company that specializes in California-specific collision reporting solutions, as well as California-specific eCitation solutions. Its web-based software is system-agnostic, and will run on any web-enabled computer regardless of operating system, including mobile devices. This solution mirrors the CHP collision forms in both data collection and appearance for conformity with the paper reports. Built-in analytics geared toward California Office of Traffic Safety (OTS) reporting OTS grant reporting quick and easy.

Crossroads also has built-in integration with LexisNexis Coplogic Solutions Inc., of which the Department is already a customer for online crime reporting. LexisNexis is the largest requestor of collision reports on behalf of insurance companies, and the vast majority of the Department's collision report requests come from LexisNexis. Direct collision report integration and information sharing with LexisNexis allows for involved parties to receive their reports digitally, and allows for LexisNexis to receive reports directly. In exchange for this data sharing ability, annual Crossroads maintenance fees would be waived and covered by the data-sharing agreement with LexisNexis and Crossroads. After the one-time set-up, there would be no additional cost to the City to maintain Crossroads so long as the data-sharing agreement with LexisNexis remains in place.

Although there are other digital collision reporting products, including a module within our existing Records Management System (RMS), they are not California CHP collision report form-specific and do not print or appear like the universal paper report forms. In addition, the Department's existing RMS does not have OTS-specific statistical reporting or collision-specific analysis capability as robust as Crossroads. The Department currently has a data-sharing agreement with LexisNexis for online reporting, Agreement No. 20-34, and proposed Agreement No. 21-24 would allow for this data sharing to expand to collision reporting with Crossroads.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 21-23 with Crossroads Software Inc. would result in an appropriation of \$5,900 from the Prop 30/AB 109 Fund. Agreement No. 21-24 would have no fiscal impact on the City's General Fund.

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

1. Approve Agreement No. 21-23 with Crossroads Software Inc. for digital collision reporting software.
2. Approve Agreement No. 21-24 with LexisNexis Coplogic Solutions Inc. for integration of Crossroads Software with the existing Coplogic Desk Officer Reporting System for online crime reporting services.
3. Authorize a \$5,900 appropriation from the Prop 30/AB 109 Fund to pay for the costs associated with Agreement No. 21-23.

Order No. 2
eCommerce Services

This Order No. 2 ("Order") is entered into this ____ day of _____, 20__ ("Order Effective Date") between Montclair Police Department ("Agency") and LexisNexis Coplogic Solutions Inc. ("Provider") and subject to the terms and conditions of the Law Enforcement Agreement effective _____, 20__ ("Agreement") between the Parties.

- 1. TERMS AND CONDITIONS. All of the terms and conditions contained in the Agreement shall remain in full force and effect and shall apply to the extent applicable to this Order except as expressly modified herein. To the extent that the terms and conditions of this Order are in conflict with the terms and conditions of the Agreement, or any other incorporated item, this Order shall control. Capitalized terms used herein but not defined shall have the same meaning as set forth in the Agreement.
2. DESCRIPTION OF SERVICES. Provider, as part of its business, has developed web based portal(s) to distribute Reports to Authorized Requestors and other authorized entities online. In exchange for the Services provided to Agency, Agency agrees that Provider shall have the sole and exclusive right to sell the Agency's crash reports online and to distribute data extracted from the Reports via Provider's eCommerce portal(s), LexisNexis® BuyCrash™, or its successor(s). Agency retains the rights to fulfill requests for Reports made pursuant to state freedom of information laws.
3. SCOPE OF SERVICES. Provider agrees to provide the following Services to Agency subject to the provisions of this Order. Except as provided in Section 2.2 of the Agreement, any change to the Services as set forth in this Order that occur after the Order Effective Date must be made by amendment to this Order, signed by both Parties. Provider will provide the following Services subject to Agency's technology capabilities, processes, and work-flow functionality:
3.1. Access to an online agency administration portal to view Reports, generate analytics, and obtain information related to Agency's Reports.
3.2. Establish a communication protocol to electronically or manually transfer Reports in a timely manner from Agency to Provider.
3.3. Provide Report distribution services as set forth in Section 5 of the Agreement.
3.4. Pursuant to Section 2.1 of the Agreement, Agency agrees that it shall not use the Services for marketing or commercial solicitation purposes.
3.5. Subject to Section 5.1 of the Agreement, Agency agrees to allow access to Agency's Reports by Participating Agencies and, in return, shall receive access to Participating Agencies' Reports. Agency agrees that it shall use Participating Agency Reports strictly for investigative and/or law enforcement purposes only.
3.6. As provided by Section 7.1 of the Agreement, Agency acknowledges that certain Services provided under this Order may include the provision of certain personal information data obtained from the state Department of Motor Vehicles ("DMV Data") and that such DMV Data may be governed by the Federal Driver's Privacy Protection Act, (18 U.S.C. § 2721 et seq.) and related state laws (collectively, the "DPPA"), and that Agency is required to comply with the DPPA, as applicable. Agency certifies it has a permissible use under the DPPA to use and/or obtain such information and Agency further certifies it will use such information obtained from Services only for the permissible purpose selected below or for the purpose indicated by Agency electronically while using the Services, which purpose will apply to searches performed during such electronic session.

Please check one below (required):

Table with 2 columns: Selection, Description. Row 1: 1. No permissible use. Row 2: x 2. Use by a government agency, but only in carrying out its functions.

3.7. Other Services: _____

4. **TERM AND TERMINATION.** This Order shall commence upon the Order Effective Date and shall continue for an initial term of thirty six (36) months ("**Initial Term**"), whereupon this Order shall automatically renew for additional twelve (12) month periods ("**Renewal Term**") unless either Party provides written notice to the other Party, at least sixty (60) days prior to the expiration of the Renewal Term.

5. **FEES.** Pursuant to Section 4 of the Agreement, the Agency Fee is _____ (\$_____). There shall be no fee to Agency for the Services.

5.1. For the avoidance of doubt, no Agency Fee will be paid with respect to the following:

- a) When an Affiliate of Provider has paid an Agency Fee to acquire a Report for an Authorized Requestor and such Affiliate later resells that Report from its inventory of previously purchased Reports to another Authorized Requestor; or
- b) When one or more components of a Report (e.g., VIN number) is provided to an Authorized Requestor or an Affiliate of Provider by Provider rather than the entirety of the Report being provided; or
- c) When a Report is acquired by an Affiliate of Provider from a source other than the eCommerce portal set forth on the applicable Order; or
- d) When a fee is not charged to an Authorized Requestor for the Report.

Nothing in this Order shall require Provider or its Affiliate to pay an Agency Fee to the Agency when an Authorized Requestor provides a Report and/or specific data extracted from the Report to a third party after the Authorized Requestor has purchased such Report from the Affiliate's inventory of previously purchased Reports. Agency acknowledges that all Reports requested by Agency Requestors shall be provided free of charge.

6. **CROSSROADS:** Agency uses Crossroads Software Inc. ("Crossroads") and hereby authorizes Provider to receive Reports from Crossroads and to distribute such Reports in accordance with Section 3 of the Agreement. For any Reports for which Provider does not receive electronic data elements from Crossroads, Agency acknowledges and agrees that Provider shall (i) manually key certain data fields from such Reports and upload such Reports and related data into Provider's systems and (ii) transfer such keyed data back to Crossroads for use in accordance with Crossroads' separate agreement with Agency. Agency assumes any and all responsibility for the actions or inactions of such transfers to or from Crossroads and indemnifies Provider from any and all claims Crossroads or other third parties may have arising from or relating to Provider's compliance with this Agency request."

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the Parties have caused this Order to be executed by their respective authorized representatives as of the Effective Date.

Agency: **Montclair Police Department**

Signature: _____

Name: **Javier John Dutrey**

Title: **Mayor**

Date: _____

ATTEST: _____
 Andrea Myrick, City Clerk

Provider: **LexisNexis Coplogic Solutions Inc.**

Signature: _____

Name: _____

Title: _____

Date: _____

Crossroads Software, Inc. Services Agreement

This Agreement dated this 18th day of October, 2021

BETWEEN:

Crossroads Software, Inc., 210 W. Birch St. #207, Brea, CA 92821 (herein Crossroads)

– **AND** –

City of Montclair (herein Montclair): 5111 Benito St. Montclair CA 91763

IN CONSIDERATION OF THE COVENANTS and agreements contained in this Agreement, the parties involved agree as follows:

General Definitions and Terms

Crossroads' Responsibilities

1. Crossroads will provide ongoing maintenance and support for the Crossroads Report Writer and Analytics System including updates to the most current versions as they become available.
2. The Crossroads Analytics System will import collision data weekly from LexisNexis for Montclair's use in the Crossroads Analytics System for Montclair's analysis for any collision report scans data-entered by LexisNexis.
3. The Crossroads Report Writer will upload approved collision reports written in the Crossroads system daily to LexisNexis for Montclair's use of the LexisNexis online report dissemination programs ("e-commerce").

Montclair's Responsibilities

1. Montclair Police Department will provide images of approved collision reports for any reports not being produced electronically in the Crossroads Collision Database to LexisNexis for Montclair's use of the LexisNexis online report dissemination programs ("e-commerce") as defined in the **LexisNexis® Law Enforcement Master Agreement and LexisNexis® Coplogic Solutions - Order No. 1 LexisNexis eCrash Agreement**, dated 3/4/20.
2. Montclair Police Department acknowledges that the Crossroads system will provide LexisNexis with the Montclair approved collision reports for the purpose of electronic dissemination for reports written by Montclair in the Crossroads system.

Crossroads Software, Inc. Services Agreement

Failure to Perform

1. There will be no liability to either party for a force majeure situation. Whether from a force majeure or other reason for failure to perform, neither party shall be responsible to the other party for any damages other than the obligations set forth in this Agreement. In no event will either party be liable for incidental or consequential damages.

Terms for Cancellation

1. This agreement may be terminated by either party at any time with 120 days written notice.
2. The term of this agreement will automatically renew each year unless terminated as provided in the preceding sentence.

Notices

All Notices shall be made in writing and shall be sent by personal delivery, first class mail, return receipt requested, overnight express, or facsimile. Notices may be sent to the following addresses:

Montclair: City of Montclair Montclair Police Department 5111 Benito St. Montclair, CA 91763	Crossroads: Crossroads Software, Inc. Brea, CA 92821
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IN WITNESS WHEREOF the parties have executed this Agreement on this 18th day of October, 2021

CITY OF MONTCLAIR

CROSSROADS SOFTWARE, INC.

Name: Javier John Dutrey

Title: Mayor

Date: _____

Name: _____

Title: _____

Date: _____

Attest: _____
Andrea Myrick, City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	SEW080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	2	PREPARER:	M. DIAZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-58-I-100, AN IRREVOCABLE ANNEXATION AGREEMENT WITH J2 EXPRESS, LLC FOR 10955-10973 CENTRAL AVENUE, MONTCLAIR, CA 91762 (APN 1011-341-51-0-000)		

REASON FOR CONSIDERATION: Irrevocable Annexation Agreements are subject to City Council review and approval.

BACKGROUND: Proposed Irrevocable Annexation Agreement 21-58-I-100 would allow a connection to the sanitary sewer system owned and operated by the City of Montclair for a 1.04-acre vacant site within the Sphere of Influence of the City. A City-owned, 8-inch diameter sewer line is present and available in Central Avenue adjacent to the property's frontage (see Exhibit A).

On September 12, 2019, the County of San Bernardino approved an automated car wash use with associated site improvements (Minor Use and Minor Variance Permit Project No. P201700365), which is currently under construction. The County zoning designation for the site is "General Commercial (GC)."

The proposed sewer connection request is consistent with the City's policies and requirements. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date. If approved by the City Council, staff will forward Agreement No. 21-58-I-100 to the Local Agency Formation Commission (LAFCO) for review and approval. Following City Council and LAFCO approvals, the Agreement is recorded against the property and becomes binding on future owners, heirs, successors, or assigns. Staff recommends City Council approve the proposed Agreement to allow the requested City sewer connection for the new commercial use.

FISCAL IMPACT: The proposed Agreement would pose no fiscal impact to the City's General Fund at this time, but will have a positive impact when the property is connected to the sewer in the future and begins to pay for sewer service.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-58-I-100, an Irrevocable Annexation Agreement with J2 Express, LLC for the property at 10955-10973 Central Avenue, Montclair, CA 91762 (APN: 1011-341-51-0-000).

Recording Requested by:

Michael Diaz
City of Montclair

When Recorded Mail To:

Michael Diaz
Community Development Director
City of Montclair
5111 Benito Street, P.O. Box 2308
Montclair, CA 91763

This Space for Recorder's Use Only

FREE RECORDING PURSUANT TO GOVERNMENT CODE §27383

**AGREEMENT NO. 21-58-I-100
AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

**J2 Express, LLC
10955-10973 South Central Avenue
Montclair, CA 91762**

APNs: 1011-341-51-0-000

AGREEMENT NO. 21-58-I-100

**AN IRREVOCABLE AGREEMENT TO ANNEX
TO THE CITY OF MONTCLAIR**

J2 Express, LLC, a California Limited Liability Company
10955-10973 South Central Avenue, Montclair, CA 91762

Parcel Map 5152
APN: 1011-341-51-0-000

This agreement is entered into this ____ day of _____, 2021, between J2 Express, LLC, hereinafter referred to as "Owner," and the City of Montclair, hereinafter referred to as "City."

WHEREAS, Owner is the legal property owner of the real property located at 19055-10973 South Central Avenue, Montclair, CA 91762-4505, the land referred to herein below as referenced by the San Bernardino County Tax Assessor Parcel Number (APN) 1011-341-51-0-000, shown as Exhibit "A" attached, and is further described as follows:

Parcel 1 and 2 of Parcel Map No. 5152, in the County of San Bernardino, State of California, except therefrom that portion of said Parcel 2 described as follows: Beginning at the southwest corner of said Parcel 2; thence north 89 Deg 38' 37" east 225.07 feet along the south line of said Parcel 2 to the southeast corner thereof; thence north 0 Deg 41' 52" west 11.88 feet along the east line of said Parcel 2 thence south 87 Deg 41' 31" west 255.17 feet to a point in the west line of said Parcel 2, said point being north 0 Deg 45' 23" west 3.19 feet along the west line of said Parcel 2 from the southwest corner thereof; thence south 0 Deg 45' 23" east 3.19 feet along the west line of said Parcel 2 to the southwest corner thereof and the point of beginning.

WHEREAS, the subject property is approximately 1.04 acres in total size, and located within unincorporated San Bernardino County and the Sphere of Influence of the City of Montclair; and

WHEREAS, according to the County of San Bernardino Tax Assessor's Office, the property records show a vacant land; and

WHEREAS, the site received entitlements for a car wash that includes 5,850 square feet of improvements involving a wash tunnel, vacuum stations, offices and storage under the approval of the County of San Bernardino (Project No. P201700365) on September 12, 2019; and

WHEREAS, the Owner desires to connect the car wash in order to operate the business as described above to the sanitary sewer system in the Central Avenue roadway, which is owned and maintained by the City of Montclair; and

WHEREAS, the City is willing to allow a connection to said sanitary sewer system if a request is made at the earliest possible time to annex to the City of Montclair; and

WHEREAS, Owner desires to annex to the City of Montclair; and

WHEREAS, the City intends to pursue annexation of Owner's property, but said annexation would cause a delay in connecting to said sewer line, which would create a substantial hardship for Owner of said property; and,

WHEREAS, the agreements, conditions, and covenants contained herein are made for the direct benefit of the land subject to this Agreement and described herein and shall create an equitable servitude upon the land and operate as a covenant running with the land for the benefit of the Owner of the land and his/her heirs, successors, and assigns.

NOW, THEREFORE, the party do agree as follows:

1. Owner do hereby give irrevocable consent to annex to the City of Montclair at such time as the annexation may be properly approved through appropriate legal proceedings, and Owner do further agree to provide all reasonable cooperation and assistance to the City in the annexation proceedings. Said cooperation is contemplated to include signing any applications of consent prepared by the City, and submitting any evidence reasonably within the control of the Owner to the various hearings required for the annexation. Said cooperation does not include, however, any obligation on behalf of the Owner to institute any litigation of judicial proceeding whatsoever to force annexation to the City.

2. The City of Montclair does hereby agree to allow a connection of said property to the sewer line owned by the City of Montclair, which is located in Central Avenue, at such time as all applicable permits have been obtained and associated fees have been paid.

3. Owner agrees to pay such annexation fees and costs and other municipal charges as would ordinarily be charged in the annexation of property to the City. Said fees shall be payable when the same becomes due and payable. (In some circumstances, these fees may be borne by the City.)

4. Owner shall pay all fees and charges and make all deposits required by the City to connect to and use the sewer, and Owner agrees to be bound by all City ordinances, rules, and regulations with respect to the sewer system. Owner agrees to pay monthly sewer charges beginning on the date this agreement is approved by the City Council.

5. Owner shall be responsible for the maintenance and repair of the sewer lateral from the building, and/or structure to which the sewer lateral is connected to the public sewer main in the street or City easement. This responsibility includes both the portion of the sewer lateral on private property and the portion located beneath the street up to the point where the lateral connects to the public sanitary sewer main. Property owner's responsibilities include maintenance and repair of the lateral, overflow cleanup, and damages to sewer main and/or pavement. The City may respond and take corrective

Agreement No. 21-58-I-100

action in the event of a sewage overflow from a lateral where there is an immediate threat to health or safety. However, the property owner shall be responsible for all costs incurred by the City.

6. Owner shall install any and all future improvements upon said property to the City's standards, except that the County standard(s) shall apply when more restrictive than the City standard(s).

7. Owner shall execute this agreement on behalf of himself, his heirs, successors, and assigns, and said agreement shall be irrevocable without the prior written consent of both parties hereto.

8. The benefit and responsibilities to the subject property shall inure to the benefit and responsibilities of subsequent owners, their heirs, successors, and assigns; and the agreements, conditions, and covenants contained herein shall be binding upon them and upon the land.

9. This agreement shall be recorded with the Office of the Recorder of the County of San Bernardino.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

CITY:

OWNER(S):

CITY OF MONTCLAIR, CALIFORNIA

J2 Express, LLC

Javier John Dutrey, Mayor

Hyung J. Yi

Date: _____

Date: _____

ATTEST:

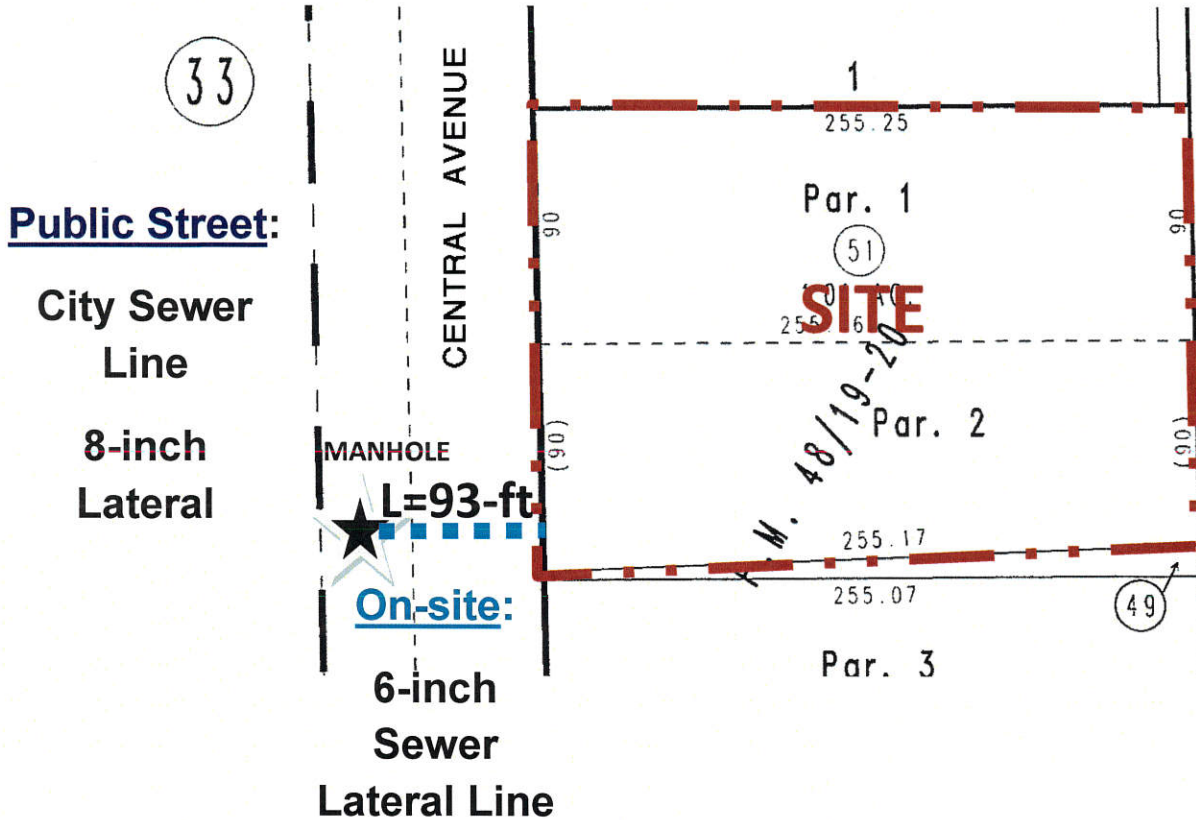
Andrea M. Myrick, City Clerk

Date

APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

Exhibit A



Irrevocable Annexation Agreement IAA No. 21-58-I-100

10955-10973 S. Central Avenue, Montclair, CA 91762

APN: 1011-341-51-0-000

(Parcel Map No. 5152)



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	PDT175/SCH125/SCH350
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	3	PREPARER:	B. VENTURA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-64 WITH CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT FOR SPECIALIZED LAW ENFORCEMENT SERVICES DURING FISCAL YEAR 2021-22		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-64 with Chaffey Joint Union High School District (CJUHSD) to have one dedicated Safe School Zone Officer assignment at Montclair High School.

Proposed Agreement No. 21-64 has been reviewed by the City Attorney and is attached for City Council's review and consideration.

BACKGROUND: The City currently has an informal agreement in place with CJUHSD for a Safe School Zone/School Resource Officer (SRO). Pursuant to the terms of Agreement No. 21-64, CJUHSD would pay \$98,315 toward the cost of a SRO. The Police Department would be obligated to provide the presence of one SRO for the high school for eight hours each school day.

The Police Department began dedicated Safe School Zone Officer services as of October 4, 2021 due to extenuating circumstances. This contract would retroactively formalize the assignment and continue for the remainder of the regular school year and summer school.

FISCAL IMPACT: Should this item be approved, CJUHSD would pay \$98,315 toward the salary of a SRO beginning October 4, 2021, through the remainder of Fiscal Year 2021-22.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-64 with CJUHSD for specialized law enforcement services during Fiscal Year 2021-22.

**AGREEMENT
FOR SPECIALIZED LAW ENFORCEMENT SERVICES**

This Agreement is made and entered into this 4th day of October, 2021 by and between the City of Montclair (hereinafter referred to as CITY) and the Chaffey Joint Union High School District (hereinafter referred to as DISTRICT), both of whom understand as follows:

WITNESSETH

WHEREAS, the following services are to be performed subject to the conditions hereinafter set forth:

NOW, THEREFORE in consideration of these services and mutual conditions hereinafter provided, the parties hereto agree as follows:

- A. Beginning with the school year through the end of the school year 2022, the CITY will perform specialized law enforcement services for the DISTRICT at and about the campus of Montclair High School. It is understood that these services are to be provided, to the extent possible, on regularly scheduled school days between 7:00 a.m. and 3:00 p.m., and during mutually agreed upon “in-service” or familiarization periods.
 - 1. It is acknowledged that the provision of services may be interrupted by the normal working conditions experienced by law enforcement agencies, which include, but are not limited to: employee illness, court appearances, training requirements, prisoner transportation, emergency circumstances taxing on other departmental resources, etc. Should the interruption of services, for any reason, extend beyond two successive days, the CITY shall meet its obligation through the assignment of an alternate sworn employee.

- B. This Agreement will allow the CITY, through its Police Department, to provide the following specialized law enforcement services to the DISTRICT:
 - 1. One Sworn Community Oriented Officer, known as a Safe School Zone Officer, shall, through random patrol and their on-campus presence, strive to maintain a crime-free zone on and around each school campus.
 - 2. Through the Safe School Zone Officer, provide a consistent and timely response to calls for assistance from the high school or concerning students from the high school.
 - 3. Through the Safe School Zone Officer, provide a consistent liaison for the high school administration on law enforcement matters.

4. Through the Safe School Zone Officer, provide resources and materials necessary for classroom presentations on law enforcement matters.
 5. Through the Safe School Zone Officer, maintain a physical presence on campus during the hours of approximately 7:00 a.m. and 3:00 p.m. on each school day subject to possible interruptions as described in paragraph A(1) above. While on campus, the role of the officer is to:
 - a. Act as a positive role model for students.
 - b. Facilitate a positive and interactive student/law enforcement relationship.
 - c. Maintain a proactive stance toward crime prevention and order maintenance.
 - d. Act as first responder to criminal conduct or order maintenance issues occurring on or about the high school campus.
 - e. Within the confines of the law, act as information resource for school administrators on matters of mutual concern.
- C. In addition to the above, beginning with the summer session of 2022, the Safe School Zone Officer will provide services to the high school, adjusting the hours to the school schedule.
1. One Safe School Zone Officer will maintain a physical presence on campus each day during the regularly scheduled school hours.
- D. In consideration for providing these services, the DISTRICT will pay to the CITY a total of \$98,315 invoiced in two equal \$49,158 amounts; the first during December 2021, and the second due in June 2022.
- E. It is understood by both parties that the Safe School Zone Officer or other CITY officers providing this service shall remain CITY's employee at all times. As such, the CITY shall be responsible for all employment costs, supervision, control, and assignment of said officers.
- F. This Agreement is not assignable, either in whole or in part, by DISTRICT without the prior written consent of the CITY. The laws of the State of California shall govern the rights, obligation, duties, and liabilities of the parties to this Agreement and shall also govern the interpretation of the Agreement, if in dispute.
- G. If the DISTRICT in its reasonable discretion is dissatisfied with a School Zone Officer, the CITY shall assign a different School Zone Officer.
- H. The School Zone Officer shall defer to the Principal in all school discipline issues, except those that place students, faculty and staff at risk of harm.

- I. It will be the responsibility of the School Zone Officer to report all crimes originating on campus.
- J. The School Zone Officer shall share information with the principal about persons and conditions that pertain to campus safety concerns.
- K. The School Zone Officer shall coordinate all of his or her activities with the principal and staff members concerned and will seek permission, guidance and advice prior to enacting any programs within the school.
- L. CITY shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner performance of the services or those engaged to perform services under this Agreement. CITY shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the services.
- M. CITY is, and shall at all times be deemed to be, an independent contractor and shall be responsible for determining the sequence, method, details and manner in which it performs those services required under the terms of this Agreement. Nothing herein contained shall be construed as creating a relationship of employer and employee, or principal and agent, between DISTRICT and CITY or any of CITY's agents or employees. CITY assumes exclusive responsibility for the acts of its employees or agents as they relate to services to be provided during the course and scope of their employment. CITY, its agents and employees, shall not be entitled to any rights and/or privileges of DISTRICT's employees and shall not be considered in any manner to be DISTRICT's employees.

TERMINATION OR MODIFICATION OF AGREEMENT

This Agreement shall end on June 30, 2022, unless extended by both the CITY and DISTRICT. The CITY or DISTRICT may terminate all or any portion of this Agreement at any time upon providing a thirty (30) day written notice delivered to the addresses below. In the event the Agreement is terminated by either party prior to June 30, 2022, DISTRICT shall pro-rate its final payment for services rendered at \$10,924 per month.

CITY: City of Montclair
5111 Benito Street
Montclair, California 91763

DISTRICT: Chaffey Joint Union High School District
211 West Fifth Street
Ontario, California 91762

INDEMNIFICATION

DISTRICT shall defend, indemnify and hold harmless the CITY, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of DISTRICT under this Agreement.

CITY shall defend, indemnify and hold harmless the DISTRICT, its elective and appointive boards, officers, agents, and employees from all liability from loss, damage, or injury to persons or property, in any manner arising out of any negligent or intentional or willful acts or omissions of CITY under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date hereinabove written.

CITY OF MONTCLAIR

Javier John Dutrey,
Mayor

Date: _____

ATTEST:

Andrea M. Myrick,
City Clerk

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT

Dr. Kern Oduro,
Assistant Superintendent of Personnel

Date: _____



CITY COUNCIL AGENDA REPORT

DATE: OCTOBER 18, 2021

FILE I.D.: SIG150

SECTION: CONSENT - AGREEMENTS

DEPT.: ECONOMIC DEV.

ITEM NO.: 4

PREPARER: E. STARR

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-65, A PARTICIPATION AGREEMENT WITH METRO HONDA AND MONTCLAIR DEALERSHIP GROUP PROPERTIES, LLC OFFERING CITY ASSISTANCE IN THE AMOUNT OF \$375,000 TOWARD THE DESIGN, CONSTRUCTION, AND INSTALLATION OF A CONFORMING, INTERSTATE-10 FREEWAY-ADJACENT PYLON ELECTRONIC MESSAGE CENTER (EMC) SIGN IN THE CITY OF MONTCLAIR, FOR WHICH THE CITY SHALL RECEIVE CERTAIN BENEFITS INCLUDING RIGHTS TO FIFTEEN PERCENT OF THE EMC SIGN'S OPERATIONAL TIME DURING EACH TWENTY-FOUR HOUR PERIOD TO ADVERTISE COMMUNITY-RELATED, PUBLIC SAFETY, PUBLIC HEALTH, AND PUBLIC RELATIONS MESSAGES; THE CONTINUED OPERATION OF THE HONDA AND ACURA NEW CAR DEALERSHIPS IN THE CITY DURING THE TERM OF THE AGREEMENT; THE GENERATION OF ADDITIONAL PROPERTY TAX INCREMENT AND SALES TAX INCOME TO THE CITY; AND THE NON-BINDING COOPERATION OF THE NISSAN NEW CAR DEALERSHIP TO CONTINUE OPERATING IN THE CITY THROUGH INCENTIVIZATION BY EXTENSION OF A CREDIT AGAINST THE PROMISSORY NOTE AMOUNT OF \$375,000

CONSIDER APPROVAL OF CONDITIONS, COVENANTS AND RESTRICTIONS AS CONTAINED IN THE OWNER DECLARATION (ATTACHMENT NO. 1 TO AGREEMENT NO. 21-65) TO SET FORTH, IN RECORDABLE FORM, CERTAIN OBLIGATIONS OF METRO HONDA AND MONTCLAIR DEALERSHIP GROUP PROPERTIES, LLC

CONSIDER APPROVAL OF THE TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN THE PROMISSORY NOTE (ATTACHMENT NO. 2 TO AGREEMENT NO. 21-65)

CONSIDER ALLOCATING UP TO \$375,000 FROM THE ECONOMIC DEVELOPMENT FUND IN THE GENERAL FUND AS THE CITY DISBURSEMENT AMOUNT FOR THE CITY'S COST SHARE OF AGREEMENT NO. 21-65

CONSIDER AUTHORIZING THE CITY MANAGER TO EXECUTE PARTICIPATION AGREEMENT NO. 21-65, OWNER DECLARATION, AND PROMISSORY NOTE

REASON FOR CONSIDERATION: The City Council is responsible for considering and approving requests for economic development assistance. The Real Estate Committee, a standing subcommittee of the City Council, at its meeting of March 15, 2021, received a request from the Metro Auto Group for economic assistance related to replacement of the existing, I-10 Freeway-adjacent electronic message center (EMC) sign, and recommended a participation agreement be prepared for City Council consideration.

BACKGROUND: Metro Honda, a California Corporation, and Montclair Dealership Group Properties, LLC, a Wyoming Limited Liability Company, operate two full-service automobile and truck dealership franchises in the City of Montclair known as Metro Honda and Metro Acura. Montclair Dealership Group Properties, LLC, is the fee owner of the site for both automotive dealerships, and is a related party with Metro Honda/Metro Acura and its principals.

The existing I-10 Freeway-adjacent pylon EMC sign on property owned by Metro Honda in the City of Montclair no longer functions and is in need of replacement. Concurrently, the novel coronavirus is having a major adverse impact on the production of new automobiles and trucks, leading some manufacturers to terminate certain models at least until 2023. New car dealerships are experiencing a lack of inventory and reductions in sales, causing some dealerships to consolidate operations, relocate to different markets, or change brands.

In March 2021, City staff was contacted by the owner of Metro Honda requesting the City's economic participation in replacement of the existing EMC sign. The quality of images displayed on the existing sign has deteriorated significantly, and new technology allows for more energy efficient EMC signs that are brighter and capable of higher and sharper resolution. In addition, the existing sign is often not in working order for extended periods of time.

In considering Metro Honda's request for City participation, City staff defined four criteria to be satisfied:

1. The participating parties would have to design and construct a pylon EMC sign to replace the existing sign, subject to approval by the City;
2. The City shall be allowed time on the EMC sign for display of City messages;
3. Metro Honda, Metro Acura, and Metro Nissan would commit to maintaining operation of their new car dealerships at their respective sites in the City during the term of a participation agreement; and
4. During the term of a participation agreement, the participating dealerships are required to produce additional sales tax revenue for the City equal to, or greater than the total sum of the City's economic participation.

At the March 15, 2021, meeting of the Real Estate Committee, members recommended a participation agreement be prepared for City Council consideration.

During the course of negotiations between the City and Metro Honda, Metro Acura and Metro Nissan, the latter withdrew and deferred to Metro Honda and Metro Acura, as represented by Metro Honda Corporation and Montclair Dealership Properties, LLC, (hereafter, the "Participant") to secure a participation agreement with the City.

City staff recommend entering into Participation Agreement No. 21-65 with Participant, wherein City purchases an operating covenant and other covenants from Participant as outlined herein, and obligates Participant to effect each of the following:

- i. Design and construct a new pylon EMC sign (hereafter, the "Conforming Sign") on Montclair Dealership Group Properties, LLC (hereafter, "Owner") property contiguous to, and on the south side of the I-10 Freeway corridor—the Conforming Sign to replace the existing, malfunctioning EMC sign;
- ii. Agree to provide up to 15 percent of operational time on the Conforming Sign for City-related public relations advertisement;
- iii. Agree to continue operating on property in Montclair owned by Owner;
- iv. Maintain recent improvements to the dealership facilities; and

- v. Generate additional property tax increment and sales tax income to the City.

Entering into Participation Agreement No. 21-65 will promote commerce within the City; maintain and increase employment opportunities; generate additional tax revenues for the Montclair community; provide for the continued operation of the Honda and Acura Dealerships on the Owner's property; and provide for the continued operation of the existing Nissan Dealership, also within the corporate limits of the City, through a Periodic Credit assignment related to design and construction of the Conforming Sign.

Agreement No. 21-65. Terms of the Participation Agreement include the following:

- **Fabrication, Installation and Maintenance of Conforming Sign.** On or before the first anniversary date of the Participation Agreement, Participant shall cause to be completed and installed a Conforming Sign on the Owner Property, and the Conforming Sign shall conform to applicable City Code provisions and be subject to design review by the City—plans for the Conforming Sign are currently in plan check in the Community Development Department.
 - Participant shall carry out the design, construction, installation, and operation of the Conforming Sign in conformity with all applicable laws, including state labor standards, City zoning and development standards, all provisions of City Code, and the Americans with Disabilities Act (ADA).
 - To the extent required by applicable law, Participant and its contractors and subcontractors shall pay prevailing wages in compliance with the Health and Safety Code and Labor Code, and it shall be mandatory for the contractor to pay not less than the prevailing rate of wages to all workers employed by the contractor in execution of construction of the Conforming Sign.
 - The cost of planning, designing, developing and constructing the Conforming Sign shall be borne solely by Participant, excepting only to the disbursement by the City of \$375,000 (hereafter, the "City Disbursement Amount") to Metro Honda Corporation as reimbursement to Participant for the City's use of the Conforming Sign for advertising electronic public relations messages. The cost of any and all other improvements shall be borne exclusively by Participant.
 - If, during the period Participation Agreement No. 21-65 is in effect (hereafter, the "Operating Covenant Period"), the Conforming Sign is totally or partially destroyed or rendered wholly or partly inoperable by fire or other casualty, Participant/Owner shall promptly proceed to take all steps necessary to reconstruct, repair, or replace the Conforming Sign to substantially the same condition as required by Participation Agreement No. 21-65.
- **Indemnification.** Participant and Owner agree to defend, indemnify, assume all responsibility for, and hold the City and its representatives harmless from all claims, demands, damages, defense costs, or liability of any kind or nature relating to the Conforming Sign or any subject matter of Participation Agreement No. 21-65 and its implementation, including Participant's compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards.

- **Insurance Requirements.** Participant and Owner, prior to commencement of construction activities on the Owner Property for the Conforming Sign, shall take out and maintain a comprehensive, or cause the contractor to take out and maintain, a comprehensive general liability policy in the amount of not less than \$2 million combined single limit policy, a builder's risk insurance policy, and a comprehensive automobile liability policy in the amount of \$1 million combined single limit, which shall protect Participant, Owner, and City from claims for damages. Participant shall also provide evidence that Participant or Owner and any contractor providing work related to performance of the Participation Agreement carry workers' compensation insurance.
 - Participant shall provide notarized certificates of insurance setting forth provisions of insurance, and naming the City and its officers, employees, agents and representatives as additionally insured parties.

- **City use of Conforming Sign.** As provided in Section 205 of the Participation Agreement, and as additional and primary consideration for the City agreeing to enter into Participation Agreement No. 21-65, Participant will make available to the City, for its sole use to display electronic messages to the public, not less than fifteen percent (15%) of all time in each twenty-four (24) hour period the Conforming Sign is operated, divided equally throughout each 24-hour period (hereafter, the "Operating Covenant").
 - The City will be allocated no less than one minute of time for each segment of time available to the City for displaying electronic messages to the public, and no interval between City-related messages shall be greater than forty (40) minutes.
 - Except as to the City Disbursement Amount, the City has no duty to absorb any costs associated with the maintenance or operation of the Conforming Sign, or with respect to the City's use of the conforming sign.

- **Disbursement of City Amount.** In addition to receiving the Operating Covenant, the City agrees to pay the City Disbursement Amount to Participant in consideration of the Participant undertaking:
 - The obligation to effect construction and installation of the Conforming Sign; and
 - Owner's conformance with the Operating and other covenants, obligations, and undertakings as provided in Participation Agreement No. 21-65.

Prior to any payments made by City pursuant to Participation Agreement No. 21-65, Participant shall deliver to City evidence of expenditures for fabrication and installation of the Conforming Sign.

- **Promissory Note.** Within fifteen (15) days after completion of installation of the Conforming Sign, Participant and Owner shall execute and deliver to the City a Promissory Note (enclosed as Attachment No. 2 to the Participation Agreement) promising reimbursement to the City in an amount equal to the City Disbursement Amount, and make payments as provided for under the Promissory Note; provided, however that such payments are subject to a Periodic Credit reduction based upon the following at each Anniversary Date (the date ending one year after the Operation Commencement Date of the Agreement, and each one year thereafter):

- The Honda and Acura Dealerships are operational on the Owner property;
 - Participant has provided the City sign messaging as provided for above under "City use of Conforming Sign"; and
 - As provided for under the following under the following section, "Application of Credits with Respect to Operation of Participation Dealerships".
- **Application of Credits with Respect to Operation of Participant Dealerships.** City shall apply a credit against the obligations set forth in the Promissory Note. The credit shall be based upon the amount of sales tax revenue collected by the City and generated by operation of the Participant Dealerships that is above the sales tax collected by the City for the baseline year of 2021 (hereafter, the "Participant Conforming Amount" and "Participant Baseline Amount", respectively), up to a total of \$22,500.00 (hereafter, the "Participant Annual Amount") for each year the credit is applied (hereafter, the "Measuring Year"), to be repeated each succeeding Measuring Year until the final credit date. Further, any excess sales tax amounts in any Measuring Year shall be carried forward and applied against the amount owing under the Promissory Note.
 - Computation of credits shall be determined by the City, and credits apply as follows: for every dollar of sales tax received by the City and generated by Participant Dealerships over the Participant Baseline Amount, the City shall apply a credit against the obligation in an amount equal to the sales tax revenues collected by the City. No credits shall be made with respect to any Measuring Year or quarterly portion thereof unless and until the Participant Baseline Amount has been exceeded for such Measuring Year.
 - Within 90 days after the applicable Anniversary Date for Participation Agreement No. 21-65, the City shall review the generation of sales tax based on data available to the City, and the aggregate amount of credits to be applied by the City under the Promissory Note shall not exceed \$375,000, or the "Maximum Participant Credit Amount".
 - Application of credits shall terminate as of the first to occur of the following:
 - i. The time the Maximum Participant Credit amount has been credited to Participant; or
 - ii. The Final Credit Date, at which time no further credits shall be forthcoming and the Participation Agreement shall cease to be in effect;
 - Credits shall be applied by the City with 60 calendar days following receipt by the City of sales tax reports from the California Department of Tax and Fee Administration (CDTFA) following the quarter for which sales taxes are reported; provided, however, unless and until the Participant Baseline Amount has been reached, no credits shall be applied in respect to the current year of operation.
 - All determinations based upon sales tax shall be based upon appropriate reports from the CDTFA or other sources deemed by the City Manager to be satisfactory for such purposes.

- Participant shall submit sales tax data for Participant Dealerships to the City within 30 days after the end of each quarter of operation of the Honda Dealership.
 - No credits shall be applied following the first to occur:
 - i. The occurrence of any grounds for acceleration under the Promissory Note (see "**Termination** (ii)");
 - ii. The occurrence of any uncured default by Participant or Owner under the Participation Agreement;
 - iii. Any uncured default by one or more of the Makers under the Promissory Note.
 - The City will subsequently apply a credit when the breach has been cured and satisfactory evidence of such cure has been provided to the City Manager.
 - No credits shall apply where the breach consists of the unauthorized transfer of the Owner Property or the Participant Dealership(s), or the closure or cessation of operation of the Participant Dealership(s).
- **Application of Credits with Respect to Nissan Dealership.** The Montclair Metro Nissan Dealership is not a participant to Participation Agreement No. 21-65 or the Promissory Note. Together, the City and Participant shall use commercially reasonable efforts to cause the operator of the Montclair Metro Nissan Dealership to continue to operate the Nissan Dealership, including the following.
 - The application of credit provisions as stated under "**Application of Credits with Respect to Operation of Participant Dealerships**" shall apply except that the share of sales tax directly generated by operation of the Nissan Dealership above the Nissan Baseline Amount shall be up to a total of \$15,000 (the "Nissan Annual Amount") for any Measuring Year.
 - To receive the Periodic Credit, the following shall apply:
 - All conditions precedent to disbursement of City Disbursement Amount shall have been and shall remain satisfied;
 - Sales tax must be generated from operation of the Nissan Dealership in excess of the Nissan Baseline Amount;
 - The Nissan Dealership must be operated in conformity with all applicable laws and City ordinances; and
 - Participant shall arrange for the provision to City of verified sales tax data concerning operation of the Nissan Dealership
- **Conditions Precedent to Disbursement of City Disbursement Amount.** Payment of the City Disbursement Amount is conditioned upon Participant's satisfaction of the following:
 - Fabrication and installation of the Conforming Sign;
 - The Owner Declaration is executed and recorded against the Owner Property;
 - The Promissory Note is executed and delivered to the City;

- Proof of insurance as required in Section 305 of the Participation Agreement is provided to the City;
 - Evidence of costs of the Conforming Sign have been provided to the City Manager and the costs are confirmed;
 - Evidence that all costs for the Conforming Sign have been paid has been provided to the City Manager; and
 - There exists no condition, event, or act that would constitute an Event Default under the Participation Agreement.
- **Covenants and Restrictions.** The following covenants and restrictions apply:
 - For a term commencing the 60th day following the Implementation Date of Participation Agreement No. 21-65 and ending through the Operating Period on the 10th anniversary thereof, Participant covenants and agrees to continuous operation of Participant Dealerships, which is an inducement for the City to enter into the Participation Agreement. Participant is not precluded from adding additional product lines of new motor vehicles, but shall not discontinue the sale of new Honda and Acura motor vehicles.
 - On the fifth anniversary of the Date of Agreement, and upon receipt by the City of a written request, after payment by Participant of all amounts outstanding under the Promissory Note, or on any date thereafter, City will modify the Operating Covenant Period to coincide with the receipt of such written request.
 - Participant and Owner shall maintain the Owner Property and all improvements thereon, in clean and operational condition.
 - Participant and Owner agree there shall be no discrimination against or segregation of any person or group of persons based on protected class under California law.
 - Covenants run with the land.
 - All terms, covenants, and conditions shall be binding upon Participant and their respective successors and assigns.
 - **Defaults and remedies.** Failure to perform any action or covenant required by the Participation Agreement and failure to cure constitutes a Default or Default Event. A party shall not be in Default if, within 30 days of receipt of notice of Default, the party commences to cure, correct, or remedy the Default with due diligence.
 - If Participant or Owner is in Default prior to expiration of the Operating Covenant Period and the Participation Agreement is terminated, Participant and Owner shall be jointly and severally liable to reimburse to the City, within 30 days, an amount equal to the total outstanding amount due under the Promissory Note, together with interest.
 - **Termination.** Participation Agreement No. 21-76 may be terminated as follows:
 - Either City or Participant/Owner may, upon written notice, terminate the Participation Agreement prior to disbursement of the City Disbursement Amount.

- After disbursement of the City Disbursement Amount, and Participant or Owner are in Default and/or fails to cure the Default, City may terminate the Participation Agreement and may avail itself of any legal or equitable remedy available at law, including acceleration of the Promissory Note, including amounts determined due the City.
- The prevailing party shall be entitled to recovery for reasonable costs, expenses, litigation costs, expert witness fees, and reasonable attorney's fees.
- **Transfers of Interests.** For the period commencing upon the date of the Participation Agreement and until the satisfaction of all obligations in the Promissory Note, no voluntary or involuntary successor in interest of Participant or Owner shall acquire any rights or powers under the Participation Agreement, nor shall there be any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Owner Property or Participant Dealerships, inclusive of the Conforming Sign.
 - Notwithstanding the above, City approval of a Transfer shall not be required in connection with the following:
 - i. With respect to Participant and Owner, a Transfer in which Participant retains a minimum of 51 percent of ownership and retains management and control.
 - ii. The conveyance or dedication of any portion of Owner Property to City or other governmental agency.
 - City agrees it will reasonably evaluate a written request for approval of a Transfer as follows:
 - i. A proposed transferee has received all necessary approvals from the California New Motor Vehicle Board and the applicable automobile manufacturer;
 - ii. The proposed transferee has a minimum of five years' experience as an owner/operator of one or more automobile dealerships comparable in size to Participant Dealerships;
 - iii. The proposed transferee is capitalized to the same or greater level than Participant; and
 - iv. Participant Dealerships shall remain in continuous operation following the proposed transfer.
- **City Approval and Actions.** City shall maintain authority of the Participation Agreement and authority to implement its provisions through the City Manager or his duly authorized representative.

Owner Declaration. Participant and Owner are required to sign an Owner Declaration (enclosed as Attachment No. 1 to Participation Agreement No. 21-65). The Owner Declaration sets forth certain Participant and Owner obligations provided under Participation Agreement No. 21-65 in recordable form, the execution and recording of which is a requirement of the Participation Agreement, which is an unrecorded document. The Owner Declaration also includes a Legal Description of the Owner Property, attached to the Owner Declaration and enclosed as Exhibit A.

Promissory Note. For value received from the City in the sum of \$375,000 (in the form of the "Note Amount"), Metro Honda Corporation and Montclair Dealership Group Properties, LLC (the "Makers" of the Promissory Note) promise under terms of the Promissory Note (the "Note" enclosed as Attachment No. 2 to Participation Agreement No. 21-65) to pay to the City the Note Amount, together with interest.

- Interest on the Note Amount shall accrue at a rate of zero percent per annum provided the Participant remains in conformity with the Participation Agreement; and five percent per annum compounded annually if Participant fails to operate Participant Dealerships in conformity with Participation Agreement No. 21-65.
- The whole of the Note Amount plus accrued interest shall become due and immediately payable concurrent with one or more of the following:
 - i. A sale or transfer (or attempt to sale or transfer) one or more of the Participant Dealerships without prior written City approval;
 - ii. A sale or transfer of the Owner Property without prior written City approval;
 - iii. Cessation or interruption of sales or servicing operations;
 - iv. Appointment of a receiver or trustee over all or substantial portion of Participant Dealership(s) or LLC assets;
 - v. One or more of Participant Dealerships or LLC is adjudicated insolvent or unable to pay debts, or voluntarily files a petition in bankruptcy;
 - vi. An involuntary petition in bankruptcy is filed against Participant Dealership(s) or LLC, and is not dismissed within 60 days;
 - vii. Any levy of attachment, execution, tax assessment or similar process is issued against any security for the Note and shall not be released within 20 days thereof; or
 - viii. Violation of one or more of the provisions of the Note or the Participation Agreement, which violation is not cured within 30 days after Notice of Default.
- Periodic Credits. For each calendar year the Note is in effect, the Makers shall receive a credit against the Note Amount in an amount equal to 100 percent of the Sales and Use Tax Revenue (Bradley Burns Uniform Local Sales and Use Tax Law) generated by the Participant Dealerships for the preceding Year of Operation or quarterly portions thereof for which the Participant Baseline Amount has been exceeded (with the first Year of Operation deemed to commence as of January 1, 2021) in excess of the Participant Baseline Amount, which amount shall constitute a Base Credit Amount. In addition, Participant Excess Accrual Amounts shall be applied as credit as of the time payment comes due under the Note. Base Credit Amounts and Excess Accrual Amounts collectively constitute the Credits. No credit shall be available as to any portion of a Year of Operation the Makers is/are in default of the Note or Participation Agreement.
- To receive the credit, Makers shall annually submit to City evidence of sales tax returns within 30 days following filing for credit. City shall use the sales tax returns to compute the amount of Base Credit Amount to which the Makers is/are entitled. City is entitled to use CDTFA sales tax data to compute the amount of each Based Credit Amount and, if available, Excess Accrual Amount Credits.

- Makers may not assign the Note or delegate any of its rights or obligations without prior written consent of the City.

FISCAL IMPACT: Pursuant to terms of Participation Agreement No. 21-65, the City would make a disbursement of \$375,000 from the City's Economic Development Fund in the General Fund to Metro Honda, a California Corporation pursuant to the covenants and requirements provided in Participation Agreement No. 21-65.

Pursuant to the Promissory Note, the City Disbursement Amount would be paid back to the City, with interest, over the term of Participation Agreement No. 21-65; provided, however, for each calendar year the Promissory Note is in effect, the Makers to the Note shall receive a credit against the Note Amount in an amount equal to 100 percent of the Sales and Use Tax Revenue (Bradley Burns Uniform Local Sales and Use Tax Law) generated by the Participant Dealerships for the preceding Year of Operation or quarterly portions thereof for which the Participant Baseline Amount has been exceeded (with the first Year of Operation deemed to commence as of January 1, 2021) in excess of the Participant Baseline Amount, which amount shall constitute a Base Credit Amount.

In addition, Participant Excess Accrual Amounts shall be applied as credit as of the time payment comes due under the Note. Base Credit Amounts and Excess Accrual Amounts collectively constitute the Credits. No credit shall be available as to any portion of a Year of Operation the Makers is/are in default of the Note or Participation Agreement.

RECOMMENDATION: Staff recommends the City Council approve each of the following:

1. Approve Agreement No. 21-65, a Participation Agreement with Metro Honda, a California Corporation, and Montclair Dealership Group Properties, LLC offering City assistance in the amount of \$375,000 toward the design, construction, and installation of a conforming, Interstate-10 Freeway-adjacent pylon EMC sign in the City of Montclair, for which the City shall receive certain benefits including rights to fifteen percent of the EMC sign's operational time during each twenty-four hour period to advertise community-related, public safety, public health, and public relations messages; the continued operation of the Honda and Acura new car dealerships in the City during the term the Agreement; the generation of additional property tax increment and sales tax income to the City; and the non-binding cooperation of the Nissan new car dealership to continue operating in the City through incentivization by extension of a credit against the Promissory Note amount of \$375,000;
2. Approve conditions, covenants and restrictions as contained in the Owner Declaration (Attachment No. 1 to Agreement No. 21-65) to set forth, in recordable form, certain obligations of Metro Honda, a California Corporation, and Montclair Dealership Group Properties, LLC;
3. Approve the terms, conditions and provisions as contained in the Promissory Note (Attachment No. 2 to Participation Agreement No. 21-65);
4. Authorize the allocation of up to \$375,000 from the Economic Development Fund in the General Fund as the City Disbursement Amount for the City's cost share of Agreement No. 21-65; and
5. Authorize the City Manager to execute Participation Agreement, Owner Declaration, and Promissory Note.

AGREEMENT NO. 21-65

PARTICIPATION AGREEMENT

by and among the

**CITY OF MONTCLAIR,
a municipal corporation**

and

**METRO HONDA,
a California corporation**

and

**MONTCLAIR DEALERSHIP GROUP PROPERTIES, LLC,
a Wyoming limited liability company**

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PARTICIPATION AGREEMENT

This **PARTICIPATION AGREEMENT** (this “Agreement”) is entered into as of November 1, 2021 (the “Date of Agreement”), by and among the **CITY OF MONTCLAIR**, a municipal corporation (the “City”), **METRO HONDA**, a California corporation (the “the Participant”), and **MONTCLAIR DEALERSHIP GROUP PROPERTIES, LLC**, a Wyoming limited liability company (the “Owner”).

RECITALS

The following Recitals are a substantive part of this Agreement. The capitalized terms used in this Agreement are defined in Section 100 herein.

A. City is a municipal corporation.

B. Participant is a California corporation and is the holder and operator of (i) a full service Honda automobile and truck franchise and in the City of Montclair, and operates an automobile and truck dealership thereon known as Metro Honda, and (ii) a full service Acura automotive franchise within the corporate limits of the City of Montclair, and operates an automobile dealership thereon known as Metro Acura. Owner is the fee owner of the site of the Honda Dealership and the Acura Dealership and is a related party with Participant, the principals of Participant holding all interest in Owner.

C. In order to induce Participant to continue operating the Honda and Acura motor vehicle dealerships on the Owner Property, cause construction and completion of new facilities and improvements thereon, and generate additional property tax increment and sales tax income to City, City and each of Participant and Owner desire to enter into this Agreement in order to provide for City to purchase an operating covenant and other covenants from Participant, and to obligate Participant to effect the construction of a “Conforming Sign” as described herein.

D. Entering into this Agreement will promote commerce within the corporate limits of the City, increase employment opportunities, and generate additional sales taxes and other local revenues for the community. Participant’s operation of the Honda Dealership and the Acura Dealership on the Owner Property the continued operation of an existing Nissan Dealership which is operating within the corporate limits of the City of Montclair as of the Date of Agreement (all as defined hereinbelow) thereon pursuant to the terms of this Agreement are in the vital and best interest of City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, City, Participant and Owner hereby agree as follows:

100. DEFINITIONS

“**Acura Dealership**” means a full service new car and truck Acura dealership on a portion of the Owner Property engaged in selling and/or leasing (subject to leasing requirements herein) of new Acura automobiles and trucks, and qualified resale vehicles, operated substantially in the manner Metro Acura has operated during the five (5) years preceding the Date of Agreement.

“Additional Nissan Conditions Precedent” has the meaning set forth therefor in Section 204.3 of this Agreement.

“California Department of Tax and Fee Administration” or **“CDTFA”** means the state agency created on June 27, 2017, by Assembly Bill (AB) 102 and known as “The Taxpayer Transparency and Fairness Act of 2017”, with assigned responsibility to administer certain taxes and fees, including the sales and use tax and business and excise taxes.

“City”, as defined in the first paragraph hereof, means the City of Montclair, a municipal corporation.

“City Code” means the Municipal Code of the City as modified from time to time.

“City Cost Share” means forty percent (40%) of the Confirmed Costs.

“City Council” means the elected governing board of the City.

“City Disbursement Amount” means an amount equal to the lesser of (i) the City Cost Share of the Confirmed Costs or (ii) Three Hundred Seventy Five Thousand Dollars (\$375,000.00).

“City Manager” means the City Manager of the City and his or her designees.

“Conditions Precedent” is defined in Section 207 of this Agreement.

“Confirmed Costs” means those expenditures made by Participant, Owner, and/or any other private party to unrelated third parties to effect the fabrication and installation of a Conforming Sign, which expenditures are confirmed by the City Manager under Section 202 of this Agreement.

“Conforming Sign” means a sign including new footings, structural pipe, LED lighting, similar to Design #806712-R11 per bid submitted by Yesco Los Angeles, a copy of which is on file with the City Manager, or such other sign as may be approved by the City Manager at his discretion.

“Date of Agreement” is defined in the first paragraph of this Agreement.

“Default” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

“Final Credit Date” means the tenth (10th) anniversary of the Operation Commencement Date.

“Honda Dealership” means a full service new car Honda car and truck dealership on the Owner Property engaged in selling and/or leasing (subject to leasing requirements herein) of new Honda automobiles and trucks, and qualified resale vehicles, operated substantially in the manner Metro Honda has operated during the five (5) years preceding the Date of Agreement.

“Makers” has the meaning set forth therefor in the Promissory Note.

“Maximum Participant Credit Amount” means an amount equal to (i) the lesser of: (a) sixty percent (60%) of the City Cost Share and (b) the original principal amount of the Promissory Note,

plus (ii) that amount, if any, that becomes applicable under Section 204.2 up to the Maximum Nissan Credit Amount.

“Maximum Nissan Credit Amount” means an amount equal to the lesser of: (i) forty percent (40%) of the City Cost Share and (ii) One Hundred Fifty Thousand Dollars (\$150,000.00).

“Nissan Baseline Amount” means that an amount equal to the sales taxes received by City from the operation of a Nissan Dealership on that factory-authorized Nissan dealership which has been located within the corporate limits of the City of Montclair prior to the Date of Agreement during the last four (4) quarterly reporting periods that precede the quarterly reporting periods for 2020 which most nearly match the 2019 calendar year.

“Nissan Dealership” means a full service new car Nissan car and truck dealership engaged in selling and/or leasing (subject to leasing requirements herein) of new Nissan automobiles and trucks, and qualified resale vehicles, operated substantially in the manner the factory-authorized Nissan dealership which as of the Date of Agreement is located within the corporate limits of the City of Montclair has operated during the five (5) years preceding the Date of Agreement.

“Notice” means a notice in the form prescribed by Section 601 hereof.

“Operating Covenant Period” is defined in Section 402 hereof.

“Operation Commencement Date” means the Date of Agreement.

“Owner” means Montclair Dealership Group Properties, LLC, a Wyoming limited liability company.

“Owner Declaration” means the Declaration of Conditions, Covenants and Restrictions in the form of Attachment No. 1 attached hereto.

“Owner Property” means that property located at 9399 Autoplex Drive, Montclair, California, 91763.

“Participant” means Metro Honda, a California Corporation.

“Participant Baseline Amount” means that an amount equal to the sales taxes received by City from the operation of a Honda Dealership on the Owner Property by Participant during the last four (4) quarterly reporting periods that precede the quarterly reporting periods for 2020 which most nearly match the 2019 calendar year.

“Private Parties” means Participant and Owner.

“Promissory Note” means a promissory note substantially in the form of Attachment No. 2.

“Sales and Use Tax Revenue” means that portion of taxes derived from, allocated to, and received by City from the imposition of the Bradley Burns Uniform Local Sales and Use Tax Law, California Revenue and Taxation Code Section 7200, *et seq.*, as amended, or any successor statute, law or regulation, arising from transactions which occur on the Owner Property or from the operation of the Nissan Dealership after January 1, 2021.

“Sales and Use Tax Revenue Period” means a calendar quarter, during all or a portion of which Sales and Use Tax Revenue is received by City.

“Year of Operation” has the meaning set forth therefor in Section 204.

200. CITY ASSISTANCE

201. Disbursement of the City Disbursement Amount. In consideration of the obligations and undertakings of Participant under this Agreement, including without limitations the obligations to effect the construction and installation of a Conforming Sign as well as the use and operating covenants evidenced by this Agreement and the obligations and undertakings of Owner (including without limitation the Owner Declaration), and subject to the prior satisfaction of the Conditions Precedent (including without limitation the fabrication and installation of the Conforming Sign), City agrees to pay to disburse the City Disbursement Amount. Payment shall be made to Participant or to a payee designated to City in writing by Participant. No payments shall be made by City to Owner or the owner or operator of the Nissan Dealership.

202. Determination and Confirmation as to Certain Costs. As soon as such information is available to Participant and prior to any payments being made by City under this Agreement, Participant shall deliver to the City Manager evidence of expenditures to third parties unrelated to Participant for the fabrication and installation of a Conforming Sign. Such evidence is to consist of written agreements, invoices, and proof that expenditures have been made. Evidence shall be specific delineating with particularity the amounts of expenditures, the payees and for what the expenditures have been made. In order to qualify as Confirmed Costs, such expenditures must further be determined by the City Manager to be reasonable as to amount.

203. Promissory Note. Within fifteen (15) days after the completion of the installation of a Conforming Sign: (i) Participant and Owner shall execute and deliver to City the Promissory Note in an amount equal to City Disbursement Amount. Participant shall be obligated to make payments under the Promissory Note as provided therein; provided that the payments otherwise due and payable thereunder are subject to reduction based upon credits to the extent applicable based upon the application of the provisions of Sections 204 and 205 hereof.

204. Credits Based upon Sales Tax Performance. Certain credits may be applied as to the Promissory Note based upon performance as set forth in the remainder of this Section 204.

204.1 Credits with respect to the Promissory Note. Commencing as of the Operation Commencement Date and ending as of the first anniversary of the Operation Commencement Date (a “Year of Operation” which terminates as of an “Anniversary Date”), provided that each of (i) the Honda Dealership is operated on a portion of the Owner Property by Participant, (ii) the Acura Dealership is operated on a portion of the Owner Property by Participant, and (iii) Participant shall have provided to City the sign messaging as provided in Section 205 hereof for the corresponding Year of Operation, City shall apply a credit as against the obligations otherwise set forth in the Promissory Note based upon that amount of sales tax revenue collected by City from the State of California as City’s share of sales tax directly generated by the operation of a Honda Dealership and the Acura Dealership on the Owner Property (the “Participant Conforming Amount”) above the Participant Baseline Amount, up to a total of Twenty Two Thousand Five Hundred Dollars (\$22,500.00) (the “Participant Annual Amount”) for any Measuring Year; this process will be repeated for each Measuring Year until the Final Credit Date. In addition to the foregoing, in the event such

operations generate the Participant Conforming Amount in excess of the Participant Annual Amount, such excess amounts (the “Participant Excess Accrual Amounts”) will be carried forward and applied against the amount owing under the Promissory Note at the time payment comes due under the Promissory Note.

Subject to compliance with Section 205, the computation of credits shall be determined in good faith by City and applied on the following basis: for every dollar of sales tax received by City generated by the operation of the Honda Dealership and the Acura Dealership over the Participant Baseline Amount, City shall apply a credit as against the obligation of the Makers under the Promissory Note in an amount equal to the sales tax revenues collected by City as the City share of sales tax revenues from the Owner Property and operations thereon. No credits shall be made with respect to any Year of Operation or quarterly portion thereof unless and until the Participant Baseline Amount has been exceeded during such Year of Operation. It is contemplated that the initial application of credit by City under this Section 204.1 for the benefit of Participant will not occur until the Conditions Precedent have been satisfied. Within ninety (90) days after the applicable Anniversary Date, City shall review the generation of sales tax to City based upon reports of sales tax that City has received from the CDTFA and/or released to City by Participant. The aggregate amount of credits to be applied by City for the benefit of the Makers, including without limitation the Participant Excess Accrual Amounts, shall not exceed Three Hundred Seventy Five Thousand Dollars (\$375,000.00) (the “Maximum Participant Credit Amount”). As of the first to occur of: (i) the time the Maximum the Participant Credit Amount has been paid to Participant or (ii) the Final Credit Date, no further credits shall be forthcoming from City, and this Agreement will cease to be of further effect. Payments shall be made by the City within sixty (60) calendar days following the receipt by City of sales tax reports from the CDTFA following the quarter for which sales taxes are reported; provided that unless and until the Participant Baseline Amount has been reached, no payments shall be required to be made in respect to the current Year of Operation. Notwithstanding any provision of this Agreement to contrary effect, in no event shall City disburse moneys in connection with the Honda Dealership, the Acura Dealership, or the Nissan Dealership or the respective operation thereof other than the City Disbursement Amount to Participant as provided in this Agreement.

All determinations based upon sales tax shall be based upon appropriate reports from the State of California or such other sources, if any, as the City Manager (acting at his sole discretion) shall deem to be satisfactory for such purposes. Participant shall cooperate in making all such reports available to City for the purposes of this Agreement.

Notwithstanding the foregoing portion of this Section 204.1, no credits shall be applied by City as to the Promissory Note following the first to occur of: (i) the occurrence of any grounds for acceleration under the Promissory Note; (ii) the occurrence of any uncured default by Participant or Owner under this Agreement; or (iii) any uncured default by one or more of the Makers under the Promissory Note. In the event a credit is not applied by City because of a default by Participant or Owner under the Promissory Note or this Agreement and such fault does not consist of an unauthorized transfer of the Owner Property, the Honda Dealership or the Acura Dealership or the closure or cessation of operation of the Honda Dealership or the Acura Dealership, City will subsequently apply a credit at such time as the breach has been cured and reasonably satisfactory written evidence of such cure has been provided to the City Manager. No credits shall be applied where the breach consists of the unauthorized transfer of the Owner Property or the Honda Dealership or the Acura Dealership or the closure or cessation of operation of the Honda Dealership or the Acura Dealership.

No payments shall be made by City to Participant without regard to the performance by Participant.

Notwithstanding any provision of this Agreement to contrary effect, in no event shall City make payments to Owner, Participant, or the owner or operator of the Nissan Dealership, or otherwise with respect to the subject matter of this Agreement; provided that the provisions of this Agreement providing for the payment by City of the City Disbursement Amount shall be effective in accordance with their terms.

204.2 Credits with respect to the Operation of a Nissan Dealership. Participant shall use commercially reasonable efforts to cause the operator of the Nissan Dealership to continue to operate the Nissan Dealership.

Commencing as of the Operation Commencement Date and ending as of the first anniversary of the Operation Commencement Date (a “Year of Operation” which terminates as of an “Anniversary Date”), provided that the Nissan Dealership is operated within the corporate limits of the City of Montclair and subject to satisfaction on a continuous basis of the Additional Nissan Conditions Precedent, City shall apply a credit as against the obligations otherwise set forth in the Promissory Note based upon that sixty percent (60%) of the amount of sales tax revenue collected by City from the State of California as City’s share of sales tax directly generated by the operation of the Nissan Dealership above the Nissan Baseline Amount, up to a total of Fifteen Thousand Dollars (\$15,000.00) (the “Nissan Annual Amount”) for any Measuring Year; this process will be repeated for each Measuring Year until the Final Credit Date. In addition to the foregoing, in the event such operations generate sales tax amounts to City in excess of the Nissan Annual Amount, such excess amounts (“Nissan Excess Amounts”) will be carried forward and applied against the amount owing under the Promissory Note at the time payment comes due under the Promissory Note.

Subject to compliance with Section 205, the computation of credits shall be determined by City and applied on the following basis: for every dollar of sales tax received by City generated by the operation of the Nissan Dealership over the Nissan Baseline Amount, with evidence of such sales taxes being provided with the consent and approval of the owner of the Nissan Dealership, City shall apply a credit of sixty percent (60%) of such amount as against the obligation of Participant under the Promissory Note. No credits shall be made under this Section 204.2 with respect to any Year of Operation or quarterly portion thereof unless and until the Nissan Baseline Amount has been exceeded during such Year of Operation. The initial application of credit by City under this Section 204.2 will not occur until the Conditions Precedent and the Additional Nissan Conditions Precedent have been satisfied. Within ninety (90) days after the applicable Anniversary Date, City shall review the generation of sales tax to City based upon reports of sales tax that City has received from the CDTFA and with respect to which the consent of the Nissan Dealership has been given and/or released to City by the operator of the Nissan Dealership. The aggregate amount of credits to be applied by City under this Section 204.2, including without limitation the Nissan Excess Accrual Amounts, if applicable, shall not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) (the “Maximum Nissan Credit Amount”). As of the first to occur of: (i) the end of the Operating Covenant Period (or, if earlier, the satisfaction in full of the Promissory Note) or (ii) the Final Credit Date, no further sums shall be due and owing from City under this Section 204.2. Unless and until the Nissan Baseline Amount has been reached, no credits under this Section 204.2 shall be required to be made in respect to the current Year of Operation.

All determinations based upon sales tax shall be based upon appropriate reports from the State of California made available to City by the operator of the Nissan Dealership or such other sources, if any, as the City Manager (acting at his sole discretion) shall deem to be satisfactory for such purposes.

Notwithstanding the foregoing portion of this Section 204.2, no credits shall be applied by City under this Section 204.2 as to the Promissory Note following the first to occur of: (i) the occurrence of any grounds for acceleration under the Promissory Note; (ii) the occurrence of any uncured default by Participant or Owner under this Agreement or any uncured default under the Promissory Note. No payments shall be made by City to the operator of the Nissan Dealership under this Agreement.

204.3 Additional Nissan Conditions Precedent. The following shall collectively constitute the “Additional Nissan Conditions Precedent”: (i) all Conditions Precedent as set forth in Section 207 of this Agreement shall have been and shall remain satisfied; (ii) sales tax must be generated to City from operation of the Nissan Dealership in excess of the Nissan Baseline Amount; (iii) the Nissan Dealership must be operated in conformity with all applicable laws, including without limitation ordinances of City; and (iii) Participant shall have arranged for the provision to City of verified sales tax data concerning the operation of the Nissan Dealership.

205. Additional Consideration by Participant to City. As additional consideration for City agreeing to enter into this Agreement, Participant shall make available to City for the sole use by City not less than fifteen percent (15%) of all time in each twenty-four (24) hour period the message board is operated, which such time for messages to be divided equally throughout all hours of daily operation of the Conforming Sign, with no segment of message board display time available to City to be less than one (1) minute by default, or as otherwise approved by City; and no interval between City message board display time to be greater than forty (40) minutes by default, or as otherwise approved by City. If daily operation of the message board display is less than twenty-four (24) hours in any calendar day, Participant and City shall jointly work together to develop a schedule for City message board display time that promotes the interests of City in receiving the beneficial use of the sign as described in the preceding portion of this Section 205. In no event, however, shall the aggregate display time available to City be less than fifteen percent (15%) of all time in each twenty-four (24) hour period the message board is operated. City shall have no duties to absorb any costs associated with the maintenance or operation of the Conforming Sign or with respect to the use of the Conforming Sign by City pursuant to this Section 205.

206. Reporting. Within thirty (30) days after the end of each quarter of operation of the Honda Dealership, Participant shall submit to the City Manager bona fide documentation substantiating the amount of sales taxes paid in respect to each of the Honda Dealership and the Acura Dealership.

207. Conditions Precedent to Disbursement of the City Disbursement Amount. Payment of the City Disbursement Amount is conditioned upon the satisfaction by Participant of the conditions precedent (a) through (g) inclusive, described below. Such conditions (the “Conditions Precedent”) are solely for the benefit of City, and shall be fulfilled by Participant (or waived by City in its sole and absolute discretion) within the time periods provided for herein.

(a) fabrication and installation of the Conforming Sign on the property described in the Owner Declaration shall have been completed;

(b) the Private Parties shall have executed and caused to be recorded against the Owner Property the Owner Declaration;

(c) the Private Parties shall have executed and delivered to City the Promissory Note;

(d) the Private Parties shall have provided proof of insurance to the extent required by Section 305 hereof;

(e) the Private Parties shall have provided evidence to the City Manager of costs for a Conforming Sign and the City Manager shall determine the Confirmed Costs;

(f) the Private Parties shall have provided evidence satisfactory to the City Manager that all costs for the Conforming Sign have been paid or that, effective upon the disbursement of the City Disbursement Amount, all costs for the Conforming Sign shall have been paid; and

(g) there shall exist no condition, event or act which would constitute an Event of Default hereunder, or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

208. Representations and Warranties.

208.1 Representations and Warranties by Participant. Participant represents and warrants to City as follows:

(a) Participant is a duly organized and existing California corporation within and in good standing under the laws of the State of California. Participant has full right, power and lawful authority to accept the City Disbursement Amount and to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Participant have been fully authorized by all requisite actions on the part of Participant.

(b) to the best of Participant's knowledge, Participant's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Participant is a party or by which it is bound.

(c) Participant is not the subject of a current or threatened bankruptcy proceeding.

Until the repayment in full or other discharge of the Promissory Note, if any, Participant shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 208.1 not to be true as of the Date of Agreement and continuing until the satisfaction in full of the obligations of Participant under the Promissory Note, immediately give written notice of such fact or condition to City. Participant's representations and warranties contained herein shall be deemed to have been made as of the disbursement of the City Disbursement Amount or any portion thereof by City.

208.2 Representations and Warranties by Owner. Owner represents and warrants to City as follows:

(a) Owner is a duly organized and existing Wyoming corporation within and in good standing under the laws of the State of Wyoming. Owner has full right, power and lawful authority to accept the City Disbursement Amount and to undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Owner have been fully authorized by all requisite actions on the part of Owner.

(b) To the best of Owner's knowledge, Owner's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Owner is a party or by which it is bound.

(c) Owner is not the subject of a current or threatened bankruptcy proceeding.

Until the repayment in full or other discharge of the Promissory Note, Owner shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 208.2 not to be true as of the Date of Agreement and continuing until the satisfaction in full of the obligations of Owner under the Promissory Note, immediately give written notice of such fact or condition to City. Owner's representations and warranties contained herein shall be deemed to have been made as of the disbursement of the City Disbursement Amount or any portion thereof by City.

300. FABRICATION AND INSTALLATION OF CONFORMING SIGN

On or before the first (1st) anniversary of the Date of Agreement, Participant shall cause to be completed and installed a Conforming Sign on the Owner Property; such Conforming Sign shall conform with all applicable provisions of the City Code, and the design, size, configuration of such sign shall have been approved by City. Before installation of the Conforming Sign, Participant shall, at their respective expenses, secure or cause to be secured any and all permits and approvals which may be required therefor as well as any other governmental approvals which may be required in connection with the Conforming Sign.

Except for the provisions applicable to City concerning the City Disbursement Amount as provided in Section 201, to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, constructing and installing the Conforming Sign shall be borne solely by Participant. The allocation of the costs as among Participant is a matter with which City need not be concerned.

301. Indemnity by Participant and Owner. Each of Participant and Owner agrees to defend, indemnify, assume all responsibility for, and hold City and its representatives, volunteers, officers, employees and agents, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any acts or omissions of one or more of Participant or Owner, whether such activities or performance thereof be by one or more of Participant or Owner or by anyone directly or indirectly employed or contracted with by one or more of Participant or Owner and whether such damage shall accrue or be discovered before or after termination of this Agreement.

302. Compliance with Laws. The Private Parties shall carry out the design, construction, installation, and operation of the Conforming Sign in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

Labor Code Section 1720(b)(3) treats work performed under contract with certain public entities as a “public work” where the work is paid for in whole or in part with public funds, which payment may be accomplished by a transfer of an asset of value for less than a fair market value price. City believes that its payments to Participant under this Agreement are being accomplished for a fair value in view of the covenant of Participant to operate as well as the undertakings of Owner. Notwithstanding the foregoing, to the extent required by applicable law or as may otherwise be determined by Participant and its legal counsel, or as determined, opined, and/or ordered by the State Department of Industrial Relations (DIR), Participant and its contractors and subcontractors shall pay prevailing wages in compliance with Health and Safety Code Sections 33423 through 33426, and Labor Code Section 1770, *et seq.*, and shall be responsible for the keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, complying with the requirements of Labor Code Sections 1726 and 1781 (in such regard each of Participant and Owner agrees and acknowledges and agrees that Participant is and shall remain the “awarding body” for the work of construction and installation of the Conforming Sign), and complying with all regulations and statutory requirements pertaining thereto. City makes no representations or warranties whatsoever with respect to the applicability of the foregoing prevailing wage and public works requirements, and Participant shall make its own determination as to such applicability.

Each of Participant and Owner agrees that all public works (as defined in California Labor Code Section 1720) performed pursuant to this Agreement (the “work”), if any and as applicable (as determined by Participant and its legal counsel or as determined, opined, or ordered by the State Department of Industrial Relations (DIR),) shall comply with the requirements of California Labor Code Sections 1770, *et seq.* In all bid specifications, contracts and subcontracts for the work, Participant and Owner (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this agreement. The contractor expressly agrees to comply with the penalty provisions of California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1771.

Each of Participant and Owner does hereby and shall indemnify and hold City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys’ fees, that may be asserted against or incurred by City or City with respect to or in any way arising from Participant’s compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

303. Nondiscrimination in Employment. Each of Participant and Owner certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

304. Cost of Design, Fabrication and Installation; Cost of Other Improvements. The cost of planning, designing, developing, and constructing the Conforming Sign shall be borne solely by Participant excepting only to the extent Section 201 hereof is applicable concerning the disbursement by City of the City Disbursement Amount as a partial reimbursement to Participant. The cost of any other improvements shall be borne exclusively by Participant.

305. Insurance Requirements. Prior to the commencement of construction activities on the Owner Property (which shall be deemed to include installation of the Conforming Sign), Participant and/or Owner shall take out and maintain or shall cause its contractor to take out and maintain until the completion of the installation of the Conforming Sign, as determined by the City Manager, a comprehensive general liability policy in the amount of not less than Two Million Dollars (\$2,000,000) combined single limit policy, a builder's risk insurance policy and a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, which shall protect Participant, Owner, and City from claims for such damages. Such policy or policies shall be written on an occurrence form and shall apply separately to each insured against which claim is made or suit is brought, except with respect to the limits of the insured's liability. Participant shall also furnish or cause to be furnished to City evidence satisfactory to City that Participant or Owner and any contractor with whom it has contracted for the performance of work on the Owner Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. Participant or Owner shall furnish a notarized certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by City setting forth the general provisions of the insurance coverage. This countersigned certificate shall name City and its officers, employees, agents, and representatives as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status. The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by Participant shall be primary insurance and not be contributing with any insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City. None of the above-described policies shall require each of Participant or Owner to meet a deductible or self-insured retention amount of more than Five Thousand Dollars (\$5,000.00) unless approved in writing by the City Manager. All policies shall be written by good and solvent insurers qualified to do business in California and shall have a policyholder's rating of A or better in the most recent edition

of “Best’s Key Rating Guide — Property and Casualty.” The required certificate shall be furnished by Participant at the time set forth herein.

305.1 Obligation to Repair and Restore Damage Due to Casualty Covered by Insurance. If during the period of installation and continuing throughout the Operating Covenant Period, the Conforming Sign shall be totally or partially destroyed or rendered wholly or partly inoperable by fire or other casualty required to be insured against by Participant and/or Owner shall promptly proceed to obtain insurance proceeds and take all steps necessary to begin reconstruction and, immediately upon receipt of insurance proceeds, to promptly and diligently commence the repair or replacement of the Conforming Sign to substantially the same condition as the Conforming Sign are required to be constructed pursuant to this Agreement, whether or not the insurance proceeds are sufficient to cover the actual cost of repair, replacement, or restoration, and Participant or Owner shall complete the same as soon as possible thereafter so that the respective improvements may be devoted to the corresponding use. In no event shall the repair, replacement, or restoration period extend past the second (2d) anniversary of the date Participant or Owner obtains insurance proceeds unless the City Manager, in his sole and absolute discretion, approves a longer period of time.

400. COVENANTS AND RESTRICTIONS

401. Use in Accordance with Laws. Each of Participant and Owner covenants and agrees for itself, its successors, assigns, and every successor in interest to any interest of Participant and Owner in the Owner Property or any part thereof, that upon and from the date of the initial disbursement of the City Disbursement Amount until the expiration or termination of the “Operating Covenant Period” (as defined in Section 402 hereof), Participant shall cause the Owner Property to be devoted to the uses designated as permissible uses under the City Code and will comply with all applicable provisions of the City Code. This Section 401 shall not be deemed to limit the effectiveness or duration of instruments previously recorded as to the Owner Property for the benefit of City.

402. Use and Operating Covenants. For a term commencing as of the sixtieth (60th) day following the Date of Agreement and ending on the tenth (10th) anniversary thereof (the “Operating Covenant Period”), Participant hereby covenants and agrees to use the Owner Property, and to operate thereon or cause to be operated thereon on a continuous basis each of a Honda Dealership and an Acura Dealership. Assuring the ongoing operation of the existing Honda Dealership with the sale of new Honda motor vehicles and new Acura motor vehicles is a material inducement for City to enter into this Agreement without which City would not have entered into this Agreement. Participant is not precluded from adding additional product lines of new motor vehicles but, in no event shall Participant discontinue the sale of new Honda motor vehicles and new Acura motor vehicles or cease to operate the Honda Dealership and the Acura Dealership at any time during the Operating Covenant Period.

In the event Participant operates the Honda Dealership and the Acura Dealership in conformity with this Agreement and there are no defaults under this Agreement, upon receipt by City of a written request therefor after the payment by Participant of all amounts then remaining as outstanding under the Promissory Note as of the fifth (5th) anniversary of the Date of Agreement, or on any date thereafter, City will modify the Operating Covenant Period to coincide with the receipt of such written request provided that such request occurs after the fifth (5th) anniversary and the full amount outstanding under the Promissory Note has been satisfied. In such event, City will prepare and make available to Participant a writing which, subject to the concurrence of each of Participant and Owner, would modify the period set forth in the Owner Declaration as the Operating Covenant Period to conform to the conforming portion of this Section 402.

Participant and Owner shall maintain the Owner Property and all improvements thereon, including all landscaping and lighting, in clean fully operational condition and in compliance with the terms of the City Code, such that the appearance of the Owner Property shall reflect the first class, first quality vehicles to be displayed, offered for sale or lease, and sold or leased at the Owner Property.

403. Nondiscrimination Covenants. Each of Participant and Owner covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Owner Property, nor shall any of Participant themselves or any person claiming under or through them establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Owner Property. The foregoing covenants shall run with the land. The Private Parties shall refrain from restricting the rental, sale or lease of the Owner Property on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Subject to the extensions of time set forth in Section 602 of this Agreement, failure by a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a “Default” or “Event of Default” under this Agreement. The failure of a condition precedent hereunder is not a default. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

If Participant or Owner is in Default prior to the expiration of the Operating Covenant Period and this Agreement is terminated as provided herein, Participant and Owner shall be jointly and severally liable to reimburse to City, within thirty (30) days of such Default, an amount equal to the total outstanding amount due under the Promissory Note, together with all interest accrued thereon, including, to the extent such default is the failure of Participant to operate one or more of the Honda Dealership or the Acura Dealership in compliance with the covenant set forth in Section 402, all amounts payable to City pursuant to Section 204 of this Agreement and Section 2 of the Promissory Note.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, a party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Bernardino, State of California.

503. Termination Prior to the Disbursement of City Disbursement Amount.

503.1 Termination by Private Parties Prior to the Disbursement of the City Disbursement Amount. In the event that Participant are not in default under this Agreement, then

prior to the disbursement by City of all or any portion of the City Disbursement Amount, one or more of Participant may terminate this Agreement upon providing written notice thereof to City and the other of the Private Parties. From the date of receipt by City of the written notice of termination of this Agreement by one or more of Participant, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties with respect to the subject matter of this Agreement.

503.2 Termination by City Prior to the Disbursement of the City Disbursement Amount. In the event that City is not in Default under this Agreement and prior to the disbursement of the City Disbursement Amount, one or more of Participant assigns or attempts to assign the Agreement or any rights therein or in the Owner Property without first having obtained the prior written approval of the City Manager (which approval may be granted, conditionally granted, or withheld at the sole discretion of the City Manager); or one or more of the City's Conditions Precedent to the disbursement of the City Disbursement Amount is not fulfilled, or if one or more of Participant is in Default of this Agreement and such Default is not cured within the time set forth therefor in Section 501 hereof; then this Agreement and any rights of Participant or any assignees or transferees with respect to or arising out of this Agreement shall, at the option of City, be terminated by City by written notice thereof to Participant. From the date of the written notice of termination of this Agreement by City to Participant and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties with respect to the subject matter of this Agreement.

504. Remedies of City after the Disbursement of the City Disbursement Amount. After the disbursement or all or any portion of the City Disbursement Amount has occurred, and if one or more of Participant or Owner (or any successors in interest) are in Default of this Agreement, and one or more of Participant or Owner fails to cure such Default within the time set forth in Section 501 hereof, then this Agreement may be terminated by City and thereafter City may avail itself of any legal or equitable remedy available at law due to the Default by one or more of Participant and Owner, including without limitation, acceleration of the Promissory Note, including without limitation amounts determined under Section 204 of this Agreement and Section 2 of the Promissory Note, including without limitation amounts determined under Section 204 of this Agreement. Recovery by City under the Promissory Note shall be limited to acts or omissions by Participant, Owner, and their respective successors in interest.

505. Attorneys' Fees. In any action among the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, to reasonable costs and expenses including, without limitation, litigation costs, expert witness fees and reasonable attorneys' fees.

506. Acceptance of Service of Process. In the event that any legal action is commenced by Participant against City, service of process on City shall be made by personal service upon the City Manager or in such other manner as may be provided by law. In the event that any legal action is commenced against Participant, service of process on Participant shall be made by personal service upon any officer or partner of Participant, whether made within or outside the State of California, or in such other manner as may be provided by law. In the event that any legal action is commenced against Owner, service of process on Owner shall be made by personal service upon any officer or partner of Owner, whether made within or outside the State of California, or in such other manner as may be provided by law.

507. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

508. Inaction Not a Waiver of Default. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications among the Parties. Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

City: City of Montclair
5111 Benito Street
Montclair, California 91763
Attention: City Manager

Participant: Metro Honda
9399 Autoplex Drive
Montclair, California 91763
Attention: General Manager

Owner: Montclair Dealership Group Properties, LLC
9399 Autoplex Drive
Montclair, California 91763
Attention: Manager

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail. Notice to either of Participant and Owner shall be deemed to constitute notice to both Participant and Owner.

602. Transfers of Interests by Private Parties

602.1 Prohibition. The qualifications and identity of Participant as the operator of the Honda Dealership on the Owner Property as well as the related nature between Participant and Owner is of particular concern to City. Furthermore, the parties acknowledge that City has negotiated the terms of this Agreement in contemplation of the operation of each of the Honda Dealership and the Acura Dealership and the property tax increment and sales tax revenues to be generated by the operation of each of the Honda Dealership and the Acura Dealership on the Owner Property. Accordingly (but subject to the immediately succeeding sentence), for the period commencing upon the date of this Agreement and until the satisfaction of all obligations evidenced by the Note, no voluntary or involuntary successor in interest of Participant or Owner shall acquire any rights or powers

under this Agreement, nor shall Participant or Owner make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the Owner Property, the Honda Dealership, the Acura Dealership, or any part of the Owner Property inclusive of the Conforming Sign thereon, nor shall any other automobile dealership other than the Honda Dealership be operated thereon, nor shall Participant or Owner make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing, or lease of one or more of the Honda Dealership or the Acura Dealership being operated upon the Owner Property (collectively referred to herein as a “Transfer”), excluding financing of flooring.

602.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, City approval of a Transfer shall not be required in connection with any of the following:

(a) With respect to Participant and Owner: a Transfer to an entity or entities in which Participant retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest and retains management and control of the transferee entity or entities in the Owner Property and/or each of the Honda Dealership and/or the Acura Dealership.

(b) The conveyance or dedication of any portion of the Owner Property to City or other appropriate governmental agency (as defined herein).

In the event of a Transfer by one or more of Participant under subparagraph (a) above not requiring City’s prior approval, Participant having knowledge of such proposed Transfer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to City of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement of all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Private Party from any obligations to City hereunder.

602.3 City Consideration of Requested Transfer. City agrees that it will reasonably evaluate a request for approval of a Transfer made pursuant to this Section 602.3, provided that Participant delivers written notice to City requesting such approval, accompanied by sufficient evidence reasonably satisfactory to City demonstrating that (a) the proposed transferee has received all necessary approvals for such transfer from the California New Motor Vehicle Board, and has received all necessary approvals from the applicable automobile manufacturer, (b) the proposed transferee has a minimum of five (5) years’ experience as an owner and/or operator or general manager of one or more automobile dealerships of comparable size as Metro Honda, or in the case of Metro Acura, Metro Acura; (c) the proposed transferee is capitalized to the same or a greater level than Participant; and (d) each of the Honda Dealership and the Acura Dealership operating on the Owner Property at the time of the proposed transfer shall remain in place and in continuous operation following the proposed Transfer. No Transfer shall be approved unless, and approvals of Transfers shall be conditioned upon the receipt of all necessary approvals for such Transfer from the California New Motor Vehicle Board, and the applicable automobile manufacturer.

602.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Participant and their respective successors and assigns.

603. Non-Liability of Officials and Employees of City. No member, official or employee of City shall be personally liable to any of Participant, including without limitation any successor in interest, in the event of any Default or breach by City of its obligations under this Agreement.

604. City Approvals and Actions. City shall maintain authority of this Agreement and the authority to implement this Agreement through the City Manager (or his duly authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not change the uses allowed on the Owner Property or materially change the economic terms of this Agreement. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council. Actions approved in writing by the City Manager on behalf of City may be treated by Participant as if taken by the City Council.

605. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 17 plus signature pages, and Attachments No. 1 through 2, each of which attachments is incorporated herein by reference.

606. Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

607. No Third Party Beneficiaries. There are no third party beneficiaries of this Agreement.

IN WITNESS WHEREOF, City, Owner, and Participant have signed this Participation Agreement as of the Date of Agreement.

“PARTICIPANT”

METRO HONDA, a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

“OWNER”

**MONTCLAIR DEALERSHIP GROUP
PROPERTIES, LLC,**
a Wyoming limited liability company

By: _____

Name: John H. Hawkins

Title: Manager

“CITY”

CITY OF MONTCLAIR, a municipal corporation

By: _____
Edward C. Starr
City Manager

ATTEST:

Andrea Myrick
City Clerk

ATTACHMENT NO. 1

OWNER DECLARATION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Montclair
5111 Benito Street
Montclair, California 91763
Attention: City Manager

This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**DECLARATION OF CONDITIONS,
COVENANTS AND RESTRICTIONS**

This DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS (the “Declaration”) is hereby entered into by and among the CITY OF MONTCLAIR, a municipal corporation (the “City”), METRO HONDA, a California corporation (the “Participant”), and MONTCLAIR DEALERSHIP GROUP PROPERTIES, LLC, a Wyoming limited liability company (the “Owner”) as of the _____ day of _____, 2021.

RECITALS

A. City, Participant and Owner have entered into an unrecorded Participation Agreement (“Agreement”) dated as of November 1, 2021 (the “Date of the Participation Agreement”) regarding the continuing operation of a new automobile dealership facility and construction of improvements thereto, which dealership is located on a parcel of real property which is more particularly and legally described on Exhibit “A” attached hereto and made a part hereof (the “Owner Property”). A copy of the Agreement is on file with City as a public record. Capitalized terms not defined herein shall have the respective meanings established therefor in the Agreement.

B. This Declaration is made pursuant to the Agreement, in order to set forth certain of Participant’s obligations under the Agreement in recordable form. The execution and recording of this Declaration is a requirement of the Agreement.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Use in Accordance with Laws. Each of Participant and Owner covenants and agrees for itself, its successors, assigns, and every successor in interest to the Owner Property or any part thereof, that until the expiration or termination of the “Operating Covenant Period” (as defined in Section 2 hereof), Participant shall devote the Owner Property to the uses designated as permitted in the City Code, and will comply with all applicable provisions of the City Code. This Section 1 shall not be deemed to limit the effectiveness or duration of instruments previously recorded as to the Owner Property for the benefit of City

2. Use and Operating Covenants. For a term commencing upon the date this Declaration is recorded and ending as of the earlier to occur of: (i) the tenth (10th) anniversary of the recording of this Declaration, or (ii) the last day of the “Operating Covenant Period” (as defined in the Agreement), each of Owner and Participant hereby covenants and agrees to use the Owner Property, and to operate thereon or cause to be operated thereon on a continuous basis each of (i) a Honda Dealership and (ii) an Acura Dealership. The Operating Covenant Period is subject to modification provided that the written approval of City is obtained.

Each of Owner and Participant shall maintain the Owner Property and all improvements thereon, including all landscaping and lighting, in clean fully operational condition and in compliance with the terms of all applicable provisions of the City Code, such that the appearance of the Owner Property shall reflect the first class, first quality vehicles to be displayed, offered for sale or lease, and sold or leased at the Owner Property.

3. Nondiscrimination Covenants. Each of Owner and Participant covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Owner Property, nor shall either Owner or Participant itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Owner Property. The foregoing covenants shall run with the land.

Each of Owner and Participant shall refrain from restricting the rental, sale or lease of the Owner Property on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

(a) **In deeds:** “The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(b) **In leases:** “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(c) **In contracts:** “There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises which are the subject of this Agreement, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

4. Effect of Violation of the Terms and Provisions of this Agreement after Completion of Construction. City is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided, without regard to whether City has been, remains or is an owner of any land or interest therein in the Owner Property or nearby or adjacent property. City shall have the right, if this Agreement is breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches and to avail itself of the rights granted herein to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, including the following:

(a) The covenants relating to use of the Owner Property in compliance with the laws set forth in Section 1 of this Declaration shall remain in effect for the Operating Covenant Period. The foregoing covenants shall run with the land and shall not limit the effect of covenants of record for the benefit of City as to the Owner Property; provided that, as a matter of general law, the Owner Property will remain subject to all laws, including without limitation the provisions of the City Code.

(b) The covenants pertaining to use and operation of the Owner Property as the Honda Dealership or other Conforming Automobile Dealership and for other uses which are set forth in Section 2 of this Declaration shall remain in effect for the Operating Covenant Period.

(c) The covenants against discrimination, as set forth in Section 3 hereof shall remain in effect in perpetuity.

5. Covenants Run With the Land. All covenants without regard to technical classification or designation shall be binding on each of Owner, Participant, their successors and assigns, and for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. All covenants contained in this Declaration, paragraphs 1 through 6, inclusive, shall be construed as covenants running with Participant's interest in the land and shall bind each of Owner, Participant, their successors and assigns, and every successor in interest to Owner's interest in the Owner Property or any part thereof, and shall not be construed as conditions which might result in forfeiture of an interest in the Owner Property or any rights therein.

6. Rights of Mortgagees. The provisions of this Declaration do not limit the right of any mortgagee or beneficiary under a deed of trust to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance upon the Owner Property or any portion thereof, or the right of any mortgagee or beneficiary under a deed of trust to exercise any of its remedies for the enforcement of any pledge or lien upon the Owner Property, provided, however, that in the event of any foreclosure under any such mortgage, deed of trust or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns and the Owner Property shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants contained in this Declaration.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration of Conditions, Covenants and Restrictions as of the date first set forth above.

(signatures on following page)

PARTICIPANT:

METRO HONDA, a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

“OWNER”

**MONTCLAIR DEALERSHIP GROUP
PROPERTIES, LLC,**
a Wyoming limited liability company

By: _____

Name: John H. Hawkins

Title: Manager

ATTACHMENT NO. 1

S-1

CITY:

CITY OF MONTCLAIR, a municipal corporation

By: _____
Edward C. Starr
City Manager

ATTEST:

Andrea Myrick
City Clerk

ATTACHMENT NO. 1
S-2

EXHIBIT A

LEGAL DESCRIPTION OF THE OWNER PROPERTY

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

PARCEL 1:

PARCELS 3, 4, 5 AND 6 OF PARCEL MAP NO. 9558, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 112, PAGES 97 AND 98 OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

TOGETHER WITH THAT PORTION OF PARCEL 2 OF SAID MAP, LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF PARCEL 6, AS SHOWN AS SAID PARCEL MAP; THENCE SOUTH 89° 50' 25" WEST 511.23 FEET, ALONG THE SOUTH LINE OF PARCELS 6 AND 4 TO THE SOUTHWEST CORNER OF PARCEL 4, AND THE TRUE POINT OF BEGINNING, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF PARCEL C AS DELINEATED IN LOT LINE ADJUSTMENT NO. 87-1, RECORDED AUGUST 14, 1987 AS INSTRUMENT NO. 87-282192 OF OFFICIAL RECORDS; THENCE ALONG THE WESTERLY LINE OF SAID PARCEL C, NORTH 00° 20' 42" WEST 130.00 FEET, TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 600.00 FEET; THENCE NORTHEASTERLY 128.06 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12° 13' 44", TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 600.00 FEET; THENCE NORTHEASTERLY 128.06 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12° 3' 44"; THENCE NORTH 00° 20' 42" WEST 139.98 FEET; THENCE SOUTH 89° 39' 18" WEST 12.00 FEET; THENCE NORTH 00° 20' 42" WEST 130.00 FEET, TO THE NORTHERLY LINE OF SAID PARCEL MAP NO. 9558.

PARCEL 2:

AN EASEMENT AS CREATED BY THAT EASEMENT DEED RECORDED APRIL 25, 1988 AS INSTRUMENT NO. 88-120117 OF OFFICIAL RECORDS, FOR INGRESS, EGRESS AND PUBLIC UTILITIES, OVER, UNDER, ALONG, ACROSS AND THROUGH THOSE PORTIONS OF PARCEL 4, PARCEL MAP NO. 9558, IN THE CITY OF MONTCLAIR, AS SHOWN BY MAP ON FILE IN BOOK 112, PAGES 97 AND 98 OF PARCEL MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA; AND PARCELS B AND C OF THE LOT LINE ADJUSTMENT NO. 87-1, RECORDED AUGUST 14, 1987 AS INSTRUMENT NO. 87-282192 OF OFFICIAL RECORDS, AND WHICH EASEMENT IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF PARCEL B OF SAID LOT LINE ADJUSTMENT WHICH BEARS SOUTH 89° 50' 25" WEST 35.56 FEET THERE ALONG FROM SOUTHWESTERLY CORNER OF PARCEL 4 OF SAID PARCEL MAP AT THE BEGINNING

EXHIBIT A TO ATTACHMENT NO. 1

Page 1 of 2

OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 30 FEET TO WHICH A RADIAL LINE OF SAID CURVE BEARS SOUTH 40° 43' 54" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE 25.98 FEET THROUGH A CENTRAL ANGLE OF 49° 36' 48"; THENCE NORTH 00° 20' 42" WEST, 17.03 FEET TO THE BEGINNING OF THE CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 150 FEET; THENCE NORTHERLY ALONG SAID CURVE 19.38 FEET THROUGH A CENTRAL ANGLE OF 07° 24' 07" TO THE BEGINNING OF REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 150 FEET; THENCE NORTHERLY ALONG SAID CURVE, 19.38 FEET THROUGH A CENTRAL ANGLE OF 07° 24' 07"; THENCE NORTH 00° 20' 42" WEST, 51.35 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 622.50 FEET; THENCE NORTHERLY ALONG SAID CURVE, 132.86 FEET THROUGH A CENTRAL ANGLE OF 12° 13' 44" TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 577.50 FEET; THENCE NORTHERLY ALONG SAID CURVE, 123.26 FEET THROUGH A CENTRAL ANGLE OF 12° 13' 44"; THENCE NORTH 00° 20' 42" WEST, 13.93 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 100 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE 54.82 FEET THROUGH A CENTRAL ANGLE OF 31° 24' 29"; THENCE NORTH 31° 45' 11" WEST, 50 FEET TO THE BEGINNING OF THE CURVE CONCAVE NORTHEASTERLY, EASTERLY, SOUTHEASTERLY, SOUTHERLY, SOUTHWESTERLY, WESTERLY AND NORTHWESTERLY, AND HAVING A RADIUS OF 60 FEET; THENCE NORTHWESTERLY, NORTHERLY, NORTHEASTERLY, EASTERLY, SOUTHEASTERLY, SOUTHERLY AND SOUTHWESTERLY ALONG SAID CURVE, 241.59 FEET THROUGH A CENTRAL ANGLE OF 230° 41' 53"; THENCE SOUTH 18° 56' 42" WEST, 60 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 100 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE, 33.67 FEET THROUGH A CENTRAL ANGLE OF 19° 07' 24"; THENCE SOUTH 00° 20' 42" EAST, 39.93 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 6220 FEET; THENCE SOUTHERLY ALONG SAID CURVE, 132.86 FEET THROUGH A CENTRAL ANGLE OF 12° 13' 44" TO THE BEGINNING OF REVERSE CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 577.50 FEET; THENCE SOUTHERLY ALONG SAID CURVE, 123.26 FEET THROUGH A CENTRAL ANGLE OF 12° 13' 44"; THENCE SOUTH 00° 20' 42" EAST 51.35 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY, AND HAVING A RADIUS OF 150 FEET; THENCE SOUTHERLY ALONG SAID CURVE 19.38 FEET THROUGH A CENTRAL ANGLE OF 07° 24' 07" TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 150 FEET; THENCE SOUTHERLY ALONG SAID CURVE 19.38 FEET THROUGH A CENTRAL ANGLE OF 07° 24' 07"; THENCE SOUTH 00° 20' 42" EAST 17.32 FEET TO THE BEGINNING OF THE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 30 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE, 25.88 FEET THROUGH A CENTRAL ANGLE OF 49° 26' 08" TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 4; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 4 AND SAID PARCEL B, SOUTH 89° 50' 25" WEST 71.05 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING WITHIN PARCEL 1 AS DESCRIBED HEREIN.

SAID LEGAL WAS MADE PURSUANT TO CERTIFICATE OF PARCEL MERGER 2006-2, RECORDED JULY 24, 2006 AS INSTRUMENT NO. 2006-0500619 OF OFFICIAL RECORDS.

EXHIBIT A TO ATTACHMENT NO. 1

Page 2 of 2

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

STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

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

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- Individual
- Corporate Officer

 Title(s)

 Title Or Type Of Document

- Partner(s) Limited General

Attorney-In-Fact

Trustee(s)

Guardian/Conservator

Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

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

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) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

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

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- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other: _____

 Number Of Pages

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STATE OF CALIFORNIA)
) ss.
 COUNTY OF _____)

On _____, before me, _____, Notary Public,
(Print Name of Notary Public)

personally appeared _____

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

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

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- Corporate Officer

 Title(s)

 Title Or Type Of Document

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Attorney-In-Fact

Trustee(s)

Guardian/Conservator

Other: _____

 Number Of Pages

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Date Of Documents

 Signer(s) Other Than Named Above

ATTACHMENT NO. 2

PROMISSORY NOTE

\$375,000.00

Montclair, California

Date of Note: _____, 2021 (“Note Date”)

FOR VALUE RECEIVED, each of Metro Honda, a California corporation (“Metro Honda”) and Montclair Dealership Group Properties, LLC, a Wyoming limited liability company (“MDGP” and collectively with Metro Honda, the “Makers”) promises under this Promissory Note (the “Note”) to pay to the City of Montclair (“Holder” or “City”) at City Hall, 5111 Benito Street, Montclair, California, 91763, or at such other address as Holder may direct from time to time in writing, Three Hundred Seventy Five Thousand Dollars (\$375,000.00) (the “Note Amount”) together with interest thereon at the rate set forth herein. All sums hereunder shall be payable in lawful money of the United States of America and all sums shall be credited first to interest then due and the balance to principal. This Note shall be a joint and several obligation of each of Metro Honda and MDGP.

This Note is delivered pursuant to a Participation Agreement by and among Metro Honda, MDGP, and City dated as of November 1, 2021 (the “Agreement”); a copy of the Agreement is on file with City as a public record. All capitalized terms not defined herein shall have the meaning established therefor by the Agreement.

1. Interest Rate. Interest shall accrue on the Note Amount at a rate of zero percent (0%) per annum based on a 360 day year during such time as the Makers operates or causes to be operated each of the Honda Dealership and the Acura Dealership on the Owner Property in conformity with the Agreement, and five percent (5%) per annum compounded annually, based on a 360 day year for any time the Makers fails to operate one or more of the Honda Dealership or the Acura Dealership on the Owner Property in conformity with the Agreement.

2. Payment. The whole of the Note Amount plus accrued interest and all other payments due hereunder shall become due and be immediately payable to the Holder by the Makers (payment shall be accelerated) and Makers shall make payment of such amounts, and any amounts payable pursuant to Section 210 of the Agreement, concurrent with the first to occur of one or more of the following: (i) a sale or transfer (or attempt to sell or transfer) of one or more of the Honda Dealership or the Acura Dealership without prior written City approval or otherwise contrary to the Agreement; (ii) a sale or transfer of the Owner Property without prior written City approval or otherwise contrary to the Agreement; (iii) the cessation or interruption of sales or servicing operations for one or more of the Honda Dealership or the Acura Dealership at the Owner Property; (iv) the appointment of a receiver or trustee over all or a substantial portion of Makers’, or one or more of Metro Honda’s, Metro Acura’s, or MDGP’s assets; (v) one or more of the Makers, or Metro Honda, Metro Acura’s, or MDGP, is adjudicated insolvent or becomes unable to pay debts as they mature, or makes a general assignment for the benefit of creditors or voluntarily files a petition in bankruptcy or any similar law; (vi) an involuntary petition in bankruptcy is filed against one or more of Makers, Metro Honda, Metro Acura or MDGP, and is not dismissed within sixty (60) days; (vii) or any levy of attachment, execution, tax assessment or similar process is issued against any security for this Note and shall not be released within twenty (20) days thereof; or (viii) violation by one or more of the provisions of this Note or the

Agreement (other than the items set forth in [i], [ii], [iii], [iv], [v], [vi] or [vii] herein) which violation is not cured within thirty (30) days after Holder gives Makers (or one or more of Metro Honda, Metro Acura, or MDGP) notice of default. The amount payable pursuant to this Section 2 shall be subject to credits, if any, to the extent applicable pursuant to Section 3 of this Note.

Unless sooner satisfied, payment under Section 2 shall be due on _____ [insert date which is sixty (60) days following the tenth (10th) anniversary of the Date of Agreement] (the “Maturity Date”).

One or more of the Makers may prepay this Note without penalty.

3. Periodic Credits.

(a) For each calendar year or portion thereof in which this Note is in effect, subject to compliance with Section 205 of the Agreement for the corresponding Year of Operation, the Makers shall receive a credit against the Note Amount in an amount equal to one hundred percent (100%) of the Sales and Use Tax Revenue (as defined hereinbelow) generated by the operation of the Honda Dealership and/or the Acura Dealership on the Owner Property in conformity with the Agreement for the preceding Year of Operation or quarterly portions thereof for which the Participant Baseline Amount has been exceeded (with the first Year of Operation being deemed to commence as of January 1, 2021) in excess of the Participant Baseline Amount, which amount shall constitute a “Base Credit Amount.” In addition, in the event one or more of the Makers causes City to receive the Participant Excess Accrual Amounts, such the Participant Excess Accrual Amounts shall be applied as a credit (“Excess Accrual Amount Credits”) as of the time payment becomes due under this Note. The Base Credit Amount(s) and the Excess Accrual Amount Credits collectively constitute the “Credits” under this Note. No credit shall be available as to any portion of a Year of Operation during which portion Metro Honda, Metro Acura, or MDGP is in default of this Note or the Agreement.

(b) “Sales and Use Tax Revenue,” for purposes of this Note, means that portion of sales taxes derived from, allocated to, and received by the City of Montclair from the application of the Bradley Burns Uniform Local Sales and Use Tax Law, California Revenue and Taxation Code Section 7200, *et seq.*, as amended, or any successor statute, law or regulation, arising from transactions which occur on the Owner Property from and after January 1, 2021, generated by the operation of one or more of a Honda Dealership and an Acura Dealership on the Owner Property in conformity with the Agreement.

(c) In order to receive a Credit pursuant to paragraph (a) above, the Makers shall annually submit to Holder evidence demonstrating compliance with Section 205 of the Agreement and quarterly submit to Holder copies of the appropriate sales tax return for the Owner Property within thirty (30) days following the filing thereof. Holder shall use such sales tax returns to compute the amount of Base Credit Amount to which the Makers is entitled. Holder shall be entitled to rely upon the sales tax data from the California Department of Tax and Fee Administration (“CDTFA”) in computing the amount of each Base Credit Amount and, if they become applicable, Excess Accrual Amount Credits. Should the amount of Sales and Use Tax Revenue due and payable by Makers for any calendar quarter be modified and an amended return filed by the Makers or by audit by the CDTFA, copies of the amended quarterly sales tax return or documents reflecting any modification in the sales and use taxes due for the period shall be provided to the Holder at the address set forth below within ten (10) days after the filing of the amended return or receipt of the audit report or other documents. Thereafter, Holder shall recompute the amount of Base Credit Amount to correspond with the

modification and the remaining amount under this Note will be adjusted to conform to such modification.

The foregoing process, as described in the preceding paragraph, shall also be utilized to determine and verify the Participant Excess Accrual Amounts and Excess Accrual Amount Credits, if any.

(d) Makers shall receive the Credit Amounts provided for herein only to the extent Makers has provided the information described in paragraph (c) above to Holder within the time frames provided therein.

(e) Additional credits may be applicable to the extent provided under Section 204.2 of the Agreement as determined by City.

4. Notice of Sale, Transfer or Refinancing. Makers, and each of Metro Honda and MDGP, agrees to notify the Holder in writing not less than thirty (30) days prior to the sale or transfer of the Honda Dealership or the Acura Dealership or Makers', or Metro Honda's, or Metro Acura's, or MDGP's, interest in the Owner Property.

5. Holder May Assign. Holder may, at its option, assign its right to receive payment under this Promissory Note without necessity of obtaining the consent of the Makers, or Metro Honda or MDGP.

6. Assignment By Makers Prohibited. Makers, or Metro Honda, or Metro Acura, or MDGP, may not assign this Note or assign or delegate any of its rights or obligations, without the prior written consent of Holder in each instance, which consent shall be at the sole discretion of Holder. As a condition to any request by one or more of the Makers to assign or delegate any of its rights or obligations under this Note, and in consideration of Holder's review thereof, Makers shall pay to Holder any and all costs incurred by Holder in processing the requesting Maker's request, including without limitation legal fees.

7. Attorneys' Fees and Costs. In the event that any action is instituted to enforce payment under this Promissory Note, each of the Makers promises to pay such sums as a court may fix for court costs and reasonable attorneys' fees.

8. Non-Waiver. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

9. Successors Bound. This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

10. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

“MAKERS”

METRO HONDA, a California corporation,

By: _____

Name: _____

Its: President _____

By: _____

Name: _____

Its: Secretary _____

MONTCLAIR DEALERSHIP GROUP
PROPERTIES, LLC, a Wyoming limited liability
company,

By: _____

Name: John H. Hawkins

Its: Manager



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 18, 2021	FILE I.D.:	COV100/CYC125
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	E. STARR

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 21-3324 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 AND ESTABLISHING PROCEDURES FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES, INCLUDING THE COVID-19 PUBLIC HEALTH EMERGENCY, FOR THE PERIOD OF OCTOBER 18, 2021 THROUGH NOVEMBER 17, 2021

REASON FOR CONSIDERATION: On September 16, 2021, California Governor Gavin Newsom signed Assembly Bill 361 (AB 361), an urgency law establishing procedures for the continuation of teleconferencing during public health emergencies, including the COVID-19 public health emergency.

The City Council may retain the option to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access, and other requirements of traditional teleconference meetings under the Ralph M. Brown Act, Government Code (GC) Sections (§)54950-54963 (the "Brown Act") open meeting laws until the end of the current state of emergency and during any future state of emergency, up until January 1, 2024. However, to preserve the City's option to exercise these relaxed teleconferencing procedures during the current public health emergency and future states of emergency, the City Council is required to make certain factual findings.

BACKGROUND: On September 30, 2021, Governor Newsom's Executive Order No. N-29-20—an order that suspended and modified the Brown Act's teleconferencing requirements during the COVID-19 pandemic—expired.

On September 16, 2021, Governor Newsom signed AB 361 into law as an urgency bill, effective immediately and then on September 20, 2021, executed an Executive Order delaying the full application of AB 361 until 11:59 pm on October 1, 2021. AB 361 permits legislative bodies of state and local entities to continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access, and other requirements of traditional teleconference meetings under the Brown Act.

Under AB 361, a legislative body may hold entirely virtual meetings (or partially virtual meetings) until the end of the current state of emergency and during any future states of emergency, up until January 1, 2024. However, to do so, the legislative body is required to make factual findings to continue teleconferencing.

Assembly Bill 361

AB 361 amended the Brown Act's teleconference rules and added new provisions for abbreviated teleconferencing procedures that deviate from the traditional teleconferencing procedures during a proclaimed state of emergency and subject to certain requirements specified in the statute.

AB 361 amended the Brown Act to add subdivision (e) to GC §54953. This subdivision describes the circumstances and procedures for adopting abbreviated teleconferencing procedures during a proclaimed state of emergency, such as the current continuing COVID-19 pandemic. Subdivision (e)(1) of the statute provides the circumstances and requirements under which a local legislative body may adopt the abbreviated teleconferencing procedures. Once a local legislative body meets the requirements for adopting teleconferencing procedures, subdivision (e)(2) provides the requirements for the abbreviated teleconferencing procedures that the local legislative body must implement.

Adopting AB 361's abbreviated teleconferencing procedures

The City Council, its standing committees, and the Planning Commission may elect to use AB 361's abbreviated teleconferencing procedures where a state of emergency has been formally proclaimed, but only if at least one of the following three conditions apply:

1. State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting to adopt AB 361 [GC §54953(e)(1)(A)]; or
2. The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees [GC §54953(e)(1)(B)], or
3. The legislative body has determined (per the previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees [GC §54953(e)(1)(C)].

As to condition No. 1, immediately above:

- On March 16, 2020, the City Council adopted Resolution No. 20-3263, declaring that a local public health emergency exists in the City of Montclair. The public health emergency continues until Resolution No. 20-3263 is rescinded.
- On September 21, 2020, the City Manager introduced, and the City Council adopted, the ***City Facilities Public Reopening, Health and Safety Plan***. The ***Plan*** introduced a strong, clear and detailed guidance to ensure public health and safety in City facilities. Protocols in ***the Plan*** are based on a variety of sources including, but not limited to, the federal government's *Opening America* plan, CDC Guidelines, State of California Guidance, EEOC Guidance

for the workplace, and the Aspen Institute Return to Play COVID-19 Risk Assessment Tool. A copy of **the Plan** had been provided to each member of the City Council.

The Plan includes guidance on public services, facility operations, buildings and spaces, and community programs such as recreation activities, parks, senior and youth center operations, indoor and outdoor sports, summer concerts and outdoor movie events, holiday celebrations (including Memorial Day, Easter, and Christmas), summer camp programs, elections, and other events.

Adoption of **the Plan** also incorporated guidance from the California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC), including public health guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

The Plan was developed, in part, to achieve the following objectives:

- Serve as a guidance as to when City of Montclair facilities are to be reopened to the public, and when programs and activities are to be restored or phased in.
- Establish facility reopening protocols. In its implementation **the Plan** may modify, suspend or replace existing department policies. It is also recognized that at the time of **the Plan's** release, the environment surrounding COVID-19 continues to be evolutionary in nature. As a result, established guidance in **the Plan** are subject to change and modification pursuant to legal, environmental, health, medical, governmental, and institutional changes and requirements.
- Provide protocols to be used as a set of tools, procedures, and guidance that enable the resumption of public operations amidst an ongoing public health emergency.
- Provide for implementation of measures that address functionality, flexibility, and operational safety while concurrently adhering to traditional legal mandates related to the provision of municipal services.
- Provide for restoration of City operations in a safe and thoughtful manner, achieved through a phased and deliberate process that requires regular adjustment to reflect operational and environmental realities.
- Provide tools for the safety of employees and the public as normal business operations resumed and continue amidst the ongoing presence of the COVID-19 pandemic.

- Provide supplemental information that supports protocols and Guidance from the San Bernardino County Public Health Department, CDPH, Cal-OSHA, CDC, and other public health-related agencies.

Factual Findings

AB 361 further imposes on local legislative bodies a duty to make factual findings to justify its election to continue to use the law’s abbreviated teleconferencing procedures pursuant to GC §54953(e)(3).

Local legislative bodies electing to use AB 361’s abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on September 30, 2021, and every 30 days thereafter:

1. The legislative body has reconsidered the circumstances of the state of emergency; and
2. Either of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.

Until January 1, 2024, legislative bodies must reconsider each of the above conditions and make factual findings, by majority vote, on whether the conditions continue to exist in order for the local legislative body to continue using AB 361’s abbreviated teleconferencing procedures.

It is noted that AB 361 was designed not only to deal with COVID-19, but also other types of states of emergency, as defined in GC §8625 of the California Emergency State Services Act.

As to condition No. 1, immediately above, Resolution No. 21-3324 makes factual findings as to the following:

- The City Council of the City of Montclair has reconsidered the circumstances of the public health emergency related to COVID-19 and Resolution No. 20-3263, adopted by the City Council on March 16, 2020, declaring that a local public health emergency exists in the City of Montclair, remains in effect.

As to condition No. 2, immediately above, Resolution No. 21-3324 makes factual findings as to the following:

- On September 21, 2020, the City Council adopted the ***City Facilities Public Reopening, Health and Safety Plan***, introducing a strong, clear, and detailed guidance to ensure public health and safety in City facilities. Protocols in ***the Plan*** are based on a variety of sources including, but not limited to, the federal governments [Opening America](#) plan, [CDC Guidelines](#), [State of California Guidance](#), [EEOC Guidance for the workplace](#), and the Aspen Institute [Return to Play COVID-19 Risk Assessment Tool](#). Adoption of ***the Plan*** also incorporated guidance from the CDPH and the CDC, including public health

guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

By adoption of Resolution No. 21-3324, the City Council of the City of Montclair reaffirms that it continues to impose measures in City facilities and at City-sponsored events to promote social distancing in compliance with the *City Facilities Public Reopening, Health and Safety Plan*.

Abbreviated teleconference requirements for open meetings

Once a local legislative body has satisfied the requirements for using abbreviated teleconferencing, AB 361 provides the following procedures:

1. Notice and agenda:

- The legislative body must provide notice and post agendas as otherwise required under the Brown Act (setting aside traditional teleconferencing requirements), and must indicate on the notice the means by which the public may access the meeting and offer comment [GC §54953(e)(2)(A-B)].
- The agenda shall identify and include an opportunity for all persons to attend via a call-in option or internet-based service.
- The agenda does not need to be posted, nor does the public need to be assured access, at all teleconference locations.
- Moreover, the notices and agenda do not need to list the teleconferencing locations of the members of the legislative body, and a quorum of the members of the legislative body do not need to participate within physical boundaries of the territory over which the local legislative body exercises jurisdiction.

2. Public comment rules: AB 361 instituted new rules for public comments for timed and untimed public comment periods during legislative body meetings.

- **Timed general public comment period:** For legislative bodies that provide for a general public comment time, AB 361 requires that the public comment period or opportunity to register shall not be closed until the set general public comment period has elapsed [GC §54953(e)(2)(G)(iii)].
- **Untimed public comment period per agenda item:** Where a local legislative body does not provide a timed public comment period, but takes public comment separately on each agenda item, the legislative body must allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including the time for individual to register or otherwise be recognized for the purposes of providing public comment [GC §54953(e)(2)(G)(ii)].
- **Timed public comment period per agenda item:** If a local legislative body provides for a timed public comment period per agenda item, the public comment period or opportunity to register shall not be closed until the set general public comment period has elapsed [GC §54953(e)(2)(G)(i)].

3. **Prohibition against requirement for public comments to be submitted in advance.** AB 361 prohibits a local legislative body from requiring public comments to be submitted in advance of the meeting, and specifies that the agency must provide an opportunity for the public to address the legislative body and offer comment in real time [GC §54953(e)(2)(E)].
4. **Registration for public comment:** AB 361 changes existing law to remove the prohibition for requiring that a member register for public comment before being allowed to provide public comment where a third-party platform (such as Zoom or Microsoft Teams) is employed [GC §54953(e)(2)(F)].
5. **Disrupted broadcasting procedures:** In the event there is a broadcasting disruption of the meeting to the public by phone or by internet, the local legislative body is prohibited from taking further action on agenda items until public access is restored. Actions taken on agenda items during a disruption are subject to challenge [GC §54953(e)(2)(D)].
6. **Planning Commission and Standing Committees:** The Planning Commission and standing committees of the legislative body are also considered “legislative bodies” under GC §54952 and, therefore, adoption of Resolution No. 21-3324 includes the Planning Commission and standing committees in its scope.
7. **Reconsideration of Factual Findings:** AB 361 requires that the legislative body make factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on September 30, 2021, and every 30 days thereafter until January 1, 2024, or until the public health emergency as declared in Resolution No. 20-3263 is rescinded, whichever is first. Although the City Council is not currently utilizing a fully teleconferenced format, its committees have continued to meet remotely, and it is important to preserve the City’s ability to hold official public meetings remotely via teleconference if necessary due to the evolving nature of the public health emergency. Accordingly, Resolution No. 21-3324 makes the required factual findings, and the City Council will be asked to adopt a similar resolution monthly.

ENVIRONMENTAL REVIEW: The California Environmental Quality Act (CEQA), State CEQA Guidelines Section 15061(b)(3) provides a “common sense” exemption to environmental review that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to review. The action proposed herein, the continuance of holding meetings remotely during a declared state of emergency, does not have the potential for causing a significant effect on the environment. Resolution No. 21-3324 includes this finding of CEQA exemption.

FISCAL IMPACT: There is no direct fiscal impact on the General Fund related to the adoption of Resolution No. 21-3324.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3324 making factual findings in compliance with AB 361 and establishing procedures for the continuation of teleconferencing during public health emergencies, including the COVID-19 public health emergency, for the period of October 18, 2021, through November 17, 2021.

RESOLUTION NO. 21-3324

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR STATING COMPLIANCE WITH THE PROVISIONS OF ASSEMBLY BILL 316 (AB 316) INCLUDING COMPLIANCE WITH ABBREVIATED TELECONFERNECE REQUIRMENTS FOR OPEN MEETINGS, AND MAKING FACTUAL FINDINGS REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY, INCLUDING RECONSIDERATION ON OR BEFORE NOVEMBER 17, 2021 OF THE CIRCUMSTANCES RELATED TO THE EMERGENCY AND CONTINUING MEASURES THAT PROMOTE SOCIAL DISTANCING

WHEREAS, approximately eighteen months after the novel coronavirus was first detected in the United State, the Delta variant of the virus has created a second front in the nation's battle against the virus as it spreads mainly through the unvaccinated members of the U.S. population and taxes the nation's hospitals and health care workers; and

WHEREAS, more Americans have now died by infection from the novel coronavirus than died from the influenza during the 1918 influenza pandemic despite a century of intervening medical advancement; and

WHEREAS, every adult in the U.S. has been eligible for vaccines since mid-April 2021 and in that time, [more Americans have died of COVID-19 per capita](#) than people in Germany, Canada, Rwanda, Vietnam, or more than 130 other countries did *in the pre-vaccine era*; and

WHEREAS, the U.S. was [ranked first among nations](#) in pandemic preparedness, but has among the highest death rates from the novel coronavirus in the industrialized world; and

WHEREAS, the U.S. [invests more in medical care](#) than any other country, but the nation's hospitals have been overwhelmed throughout the course of the COVID-19 pandemic; and

WHEREAS, the U.S. greatly advanced development of COVID-19 vaccines at record breaking speed, , but its [vaccination rates plateaued](#) so quickly that it is now [38th in the world](#) among nation's with vaccinated populations; and

WHEREAS, [the COVID-19 pandemic may end up costing the U.S. an estimated \\$16 trillion](#); and

WHEREAS, in 11 of California's 58 counties, more than 70 percent of the population is at least partially vaccinated, but 14 other counties have coverage rates below 50 percent, including the Inland Empire; and

WHEREAS, the Inland Empire has the lowest vaccination rate in all of Southern California, with just 47.2 percent of residents of all ages in San Bernardino County fully vaccinated, and only 50.4 percent of residents in Riverside County vaccinated; and

WHEREAS, until recently, the Delta variant overwhelmed Inland Empire hospitals, with hospitalization rates higher than anywhere else in Southern California; and

WHEREAS, recognizing the continuing public health threat posed by the novel coronavirus, California Governor Gavin Newsom on September 16, 2021 signed Assembly Bill 361 (AB 361), an urgency law establishing procedures for the continuation of teleconferencing during public health emergencies, including the COVID-19 public health emergency; and

WHEREAS, the Montclair City Council, its standing committees, and the Montclair Planning Commission may continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access and other requirements of traditional teleconference meetings under the Ralph M. Brown Act—Government Code (GC) sections (§§)54950-54963 (the "Brown Act") open meeting laws until the end of the current state of emergency and during any future state of emergency, up until January 1, 2024; and

WHEREAS, to continue meeting virtually, the Montclair City Council is required to make factual findings.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby elects to use AB 361's abbreviated teleconferencing procedures where a state of emergency has been formally proclaimed, but only if at least one of the following three conditions apply, and this election shall hereby include its standing committees and the Montclair Planning Commission:

1. State or local officials have imposed or recommended measures to promote social distancing at the time the legislative body holds the meeting to adopt AB 361 [GC §54953(e)(1)(A)]; or
2. The legislative body holds a meeting for the first time for the purpose of determining by majority vote whether, as a result of proclaimed state of emergency, meeting in person would present imminent risks to the health and safety of attendees [GC §54953(e)(1)(B)], or
3. The legislative body has determined (per the previous bullet) that, as a result of the proclaimed state of emergency, meeting in person would continue to present imminent risks to the health or safety of attendees [GC §54953(e)(1)(C)].

As to condition No. 1, immediately above:

- On March 16, 2020, the City Council adopted Resolution No. 20-3263 declaring that a local public health emergency exists in the City of Montclair. The public health emergency continues until Resolution No. 20-3263 is rescinded.
- On September 21, 2020, the City Manager introduced, and the City Council adopted, the **City Facilities Public Reopening, Health and Safety Plan**. **The Plan** introduced a strong, clear and detailed guidance to ensure public health and safety in City facilities. Protocols in **the Plan** are based on a variety of sources including, but not limited to, the federal government's *Opening America* plan, CDC Guidelines, State of California Guidance, EEOC Guidance for the workplace, and the Aspen Institute Return to Play COVID-19 Risk Assessment Tool. A copy of **the Plan** had been provided to each member of the City Council.

The Plan includes guidance on public services, facility operations, buildings and spaces, and community programs such as recreation activities, parks, senior and youth center operations, indoor and outdoor sports, summer concerts and outdoor movie events, holiday celebrations (including Memorial Day, Easter, and Christmas), summer camp programs, elections, and other events.

Adoption of **the Plan** also incorporated guidance from the California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC), including public health guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

The Plan was developed, in part, to achieve the following objectives:

- Serve as a guidance as to when City of Montclair facilities are to be reopened to the public, and when programs and activities are to be restored or phased in.
- Establish facility reopening protocols. In its implementation **the Plan** may modify, suspend or replace existing department policies. It is also recognized that at the time of **the Plan's** release, the environment surrounding COVID-19 continues to be evolutionary in nature. As a result, established guidance in **the Plan** are subject to change and modification pursuant to legal, environmental, health, medical, governmental and institutional changes and requirements.

- Provide protocols to be used as a set of tools, procedures and guidance that enable the resumption of public operations amidst an ongoing public health emergency.
- Provide for implementation of measures that address functionality, flexibility, and operational safety, while concurrently adhering to traditional legal mandates related to the provision of municipal services.
- Provide for restoration of City operations in a safe and thoughtful manner, achieved through a phased and deliberate process that requires regular adjustment to reflect operational and environmental realities.
- Provide tools for the safety of employees and the public as normal business operations resumed and continue amidst the ongoing presence of the COVID-19 pandemic.
- Provide supplemental information that supports protocols and Guidance from the San Bernardino County Public Health Department, CDPH, Cal-OSHA, CDC, and other public health-related agencies.

BE IT FURTHER RESOLVED that pursuant to AB 361, local legislative bodies electing to use the urgency bill’s abbreviated teleconferencing procedures must make the following factual findings within 30 days after teleconferencing for the first time after the expiration of Executive Order No. N-29-20 on September 30, 2021, and every 30 days thereafter until January 1, 2024, or when Montclair City Council Resolution No. 20-3263 declaring a public health emergency is rescinded, whichever comes first:

1. The legislative body has reconsidered the circumstances of the state of emergency; and
2. Either of the following circumstances exist:
 - The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - State or local officials continue to impose or recommend measures to promote social distancing.

As to condition No. 1, immediately above, this Resolution makes factual findings as follows:

- The City Council of the City of Montclair, in reconsideration of the circumstances of the public health emergency related to COVID-19, as expressed in Montclair City Council Resolution No. 20-3263, adopted March 16, 2020, declaring that a local public health emergency exists in the City of Montclair, remains in effect.

As to condition No. 2, immediately above, this Resolution makes factual findings as to the following:

- On September 21, 2020, the City Council adopted the ***City Facilities Public Reopening, Health and Safety Plan***, introducing a strong, clear and detailed guidance to ensure public health and safety in City facilities. Protocols in ***the Plan*** are based on a variety of sources including, but not limited to, the federal governments *Opening America* plan, CDC Guidelines, State of California Guidance, EEOC Guidance for the workplace, and the Aspen Institute Return to Play COVID-19 Risk Assessment Tool. Adoption of ***the Plan*** also incorporated guidance from the California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC), including public health guidelines that promote personal responsibility for social distancing and compliance with face covering mandates, education on the need to avoid large gatherings, and promotion of protocols related to personal hygiene.

By adoption of this Resolution, the City Council of the City of Montclair reaffirms that it continues to impose measures in City facilities and at City-sponsored events to promote social distancing in compliance with the ***City Facilities Public Reopening, Health and Safety Plan***.

BE IT FURTHER RESOLVED that the City Council of the City of Montclair, its standing committees, and the Montclair Planning Commission shall further comply with each of AB 361's abbreviated teleconference requirement for open meetings, including the following:

1. Notice and agenda:

- The City of Montclair shall provide notice and post agendas as otherwise required under the Brown Act (setting aside traditional teleconferencing requirements), and shall indicate on the notice the means by which the public may access the meeting and offer comment.
- The agenda shall identify and include an opportunity for all persons to attend via a call-in option or internet-based service. Further, (1) the agenda is not required to be posted at all teleconferencing locations, (2) public access does not need to be assured at all teleconference locations, (3) the notices and agenda do not need to list the teleconferencing locations of the members of the City Council, and (4) a quorum of the members of the City Council do not need to participate within physical boundaries of the City of Montclair.

2. Public comment rules: AB 361 instituted new rules for public comments for timed and untimed public comment periods during legislative body meetings.

- **Timed general public comment period:** The Montclair City Council, its committees, and the Montclair Planning Commission provide members of the public a timed, general public comment period, and opportunity to register for public comment does not close until the set general public comment period has elapsed.
- **Untimed public comment period per agenda item:** The Montclair City Council, its committees, and the Montclair Planning Commission provide for a timed, general public comment period.
- **Timed public comment period per agenda item:** The Montclair City Council, its committees, and the Montclair Planning Commission provide for a timed public comment period per agenda item.

3. Prohibition against requirement for public comments to be submitted in advance. The Montclair City Council, its committees, and the Montclair Planning Commission comply with AB 361's prohibition against a local legislative body from requiring public comments to be submitted in advance of the meeting.

4. Registration for public comment: The Montclair City Council, its committees, and the Montclair Planning Commission comply with AB 361 by not imposing a requirement that a member of the public register for public comment before being allowed to provide public comment where a third-party platform (such as Zoom or Microsoft Teams) is employed.

5. Disrupted broadcasting procedures: In the event there is a broadcasting disruption of a meeting of the Montclair City Council, its committees, and the Montclair Planning Commission to the public by phone or by internet, the Montclair City Council, its committees, and the Montclair Planning Commission will take no further action on agenda items until public access is restored.

6. Standing Committee: Each standing committee of the Montclair City Council shall fall under the scope of AB 361.

7. Montclair Planning Commission: The Montclair Planning Commission shall fall under the scope of AB 361.

BE IT FURTHER RESOLVED that this action is exempt from review pursuant to the California Environmental Quality Act (CEQA) in accordance with State CEQA Guidelines Section 15061(b)(3), the "common sense" exemption that CEQA only applies to projects that have the potential for causing a significant effect on the environment.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of November 17, 2021, or such time as the City Council adopts a subsequent resolution in accordance with GC §54953(e)(3) to extend the time during which meetings may continue to be held remotely by teleconference in compliance with that section.

APPROVED AND ADOPTED this XX day of XX, 2021.

ATTEST:

Mayor

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3324 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

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS
COMMITTEE HELD ON THURSDAY, APRIL 15, 2021, AT 4:00 P.M. HELD
VIA ZOOM TELECONFERENCE**

I. CALL TO ORDER

Chair Johnson called the meeting to order at 4:04 p.m.

II. ROLL CALL

Present: Council Member Johnson (Chair); Council Member Lopez (Committee Member); City Manager Starr; Senior Management Analyst Fuentes; Executive Director of Public Safety/Police Chief Avels; Public Works Director/City Engineer Castillo; Director of Community Development Diaz

III. APPROVAL OF MINUTES

The Committee approved the minutes of the March 18, 2021 regular meeting.

IV. PUBLIC COMMENT - None

V. PUBLIC WORKS DEPARTMENT UPDATES/ITEMS

A. OPERATIONS

1. MAINTENANCE ACTIVITIES

An Operations Activities Report for the past month was included with the agenda. A summary of the first three months of graffiti activity for 2021 was provided in the report. The Committee requested that it be included in the report going forward.

Committee Member Lopez reported debris needing to be picked up at Orchard Street at the gas station on Central Avenue. Staff advised the debris have already been removed, including a couch.

2. ADDITIONAL ITEMS — None

B. FACILITIES

1. MAINTENANCE ACTIVITIES

A Facilities Activities Report for the past month was included with the agenda. There were no questions or issues with the report.

2. ADDITIONAL ITEMS — None

C. ENGINEERING DIVISION ITEMS

1. Consider removal of No Parking signs at 4461 Brooks Street at Ramona Ave

Public Works Director/City Engineer Castillo introduced the item and provided historical background. Being that the street is wide enough to allow parking on the south side of Brooks Street, staff recommended the removal of the parking restrictions. The Committee agreed and recommended moving forward with removal of the No Parking signs.

2. Resolution of unfinished landscaping at the front of Fire Station 2

Public Works Director/City Engineer Castillo advised landscaping has not been addressed due to unforeseen issues. A new Capital Improvement Program project will come to Council for approval shortly to move the project forward.

3. Status on fire engine selection for grant opportunity

Executive Director of Public Safety/Police Chief Avels advised staff is awaiting grant award information. Once the grant is awarded, the Chief will announce it to the Committee.

Committee Member Lopez asked a clarifying question on the logistics of the grant application and the amount of money sought and eligible expenses. Chief Avels and City Manager Starr responded that the grant awarded will have flexibility on what can be purchased.

4. Status of meetings regarding AC/heating units at both police headquarters and fire stations

Public Works Director/City Engineer Castillo provided some background and an update on a meeting held on the morning of April 15, 2021 regarding the Fire Stations. Fire staff requested full control of the air conditioning units and the ability to turn them on and off, similar to how one would at home. Public Works Staff informed to Fire Staff that AC systems in commercial buildings are designed to run on parameters different than a residential home unit. Public works staff will continue to work with Fire Staff to make sure the Fire Stations air conditioning system and controls are improved. Some of the actions that will be taken include moving some of the air conditioning vents to improve airflow. Additionally, Public Works staff will provide a map of the air conditioning zones and indicate which thermostats control those zones/rooms.

Committee Member Lopez alluded to additional concerns at the Police Station. Public Works Director/City Engineer Castillo stated he will follow up on any concerns with Police Department staff as well.

5. Update on plumbing/shower issues at both fire stations

Public Works Director/City Engineer Castillo advised he is proposing a Capital Improvement Program to remedy the plumbing issues at the fire stations. The new project will come to the City Council for approval shortly to move the project forward.

6. 9614 Benson Avenue-deed over access to Sunrise Park — No update

7. Status of grant application for Montclair Safe Routes to School Implementation Project

Public Works Director/City Engineer advised the City's application for the grant was not successful. The application was very ambitious and consequently the grant application was for \$5 million dollars. Staff will repackage a smaller project to apply in a future call for projects.

8. Status of grant application for HSIP Grant for Ramona at Howard Roundabout

The City was awarded a \$771,100 grant to construct a roundabout configuration at the intersection of Ramona Avenue and Howard Street. The project design phase will commence soon. A more detailed schedule will be brought to the Committee at a future meeting.

VI. POLICE DEPARTMENT UPDATE/ITEMS

Executive Director of Public Safety/Police Chief Avels provided an update on the arrest of an individual with the moniker "TREE," who had recently vandalized various places around the City with his name. The Department is hopeful for a successful prosecution that will prevent him from propagating graffiti.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

Director of Community Development Diaz advised staff is updating the accessory dwelling unit ordinance to meet new laws and regulations. Three projects are nearing completion: Vista Court, a residential project south of Fire Station No. 1; a senior living facility on Monte Vista Avenue south of the I-10 freeway should be completed in the upcoming months; and the old Girl Scouts building has been painted and has a new tenant. DriveTime will be relocating to the old Pegasus building on Moreno Street, west of Benson Avenue.

VIII. CAPITAL PROJECT UPDATES

A. LOCAL PROJECTS

1. Central Avenue Utility Underground Project — No update

2. Holt Boulevard Rehabilitation Project — No update

3. Reeder Ranch Park – Start Of Design Phase — No update

4. Pacific Electric Trail Bridge Replacement Project

Public Works Director/City Engineer Castillo advised this emergency project intends to replace an existing wooden bridge on the Pacific Electric Trail that was damaged due to a fire. The proposed replacement bridge will be a prefabricated steel truss bridge. The replacement cost is estimated at \$500,000. The San Bernardino County Transportation Authority will take an item to its Board in May to recommend assistance in the amount of \$100,000 towards the bridge replacement. City staff will apply with the state for a Transportation Development Act Grant, requesting maintenance moneys in the amount of \$200,000 once the call for projects is released. A recommend-

ation to declare an emergency to expedite the replacement of the bridge on the regionally-significant trail will be on the City Council's next regular meeting agenda.

B. REGIONAL PROJECTS

1. **I-10 Corridor Project** — No update
2. **Chino Basin Program (Inland Empire Utilities Agency)** — No update
3. **Central Avenue Bridge** — No update
4. **Foothill Gold Line Extension**


City Manager Starr advised staff continues to work on developing federal funding related to this project. Congresswoman Torres is stepping forward as an advocate on the City's behalf to secure an earmark in the President's proposed infrastructure bill. Staff is looking at \$500-\$600 million in the proposal. Generally, few projects in the nation would receive money at this level. Congresswoman Torres is planning on meeting with Secretary of Transportation Buttigieg to discuss his support for the funding. If approved, the City would need to develop a 20 percent match. Staff believes that the state should be more than willing to assist with the match. If the Federal Transportation Administration is willing to consider the \$80 million that the San Bernardino County Transportation Authority had set aside as part of the local match, the state would only need to come up with an additional 30-40 million dollars. Montclair has been a major advocate to federalize the final segment of the Gold Line Extension project into San Bernardino County. The issue of federalizing the project was raised with the Gold Line Construction Authority. While the Construction Authority is onboard, it has been restricted from advocating the procurement of federal dollars due to an agreement with LA Metro that prohibits such advocacy. The City will continue to work with LA Metro to allow The Construction Authority to secure federal dollars for the project. Montclair has its own federal legislative advocate, and the Construction Authority has also hired a legislative advocate to represent its interest in securing federal funding for the project

IX. COMMITTEE AND CITY MANAGER ITEMS — None

X. ADJOURNMENT

At 4:55 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, May 20, 2021.

Submitted for Public Works Committee approval,



Noel Castillo
Transcribing Secretary

**MINUTES OF THE CITY OF MONTCLAIR REAL ESTATE
COMMITTEE MEETING HELD ON MONDAY, MAY 17, 2021
AT 5:30 P.M. HELD VIA ZOOM TELECONFERENCE**

I. CALL TO ORDER

Chair Dutrey called the meeting to order at 5:30 p.m.

II. ROLL CALL

Present: Mayor Dutrey (Chair); Council Member Martinez (Vice Chair); Acting City Manager Richter, Acting Deputy City Manager Fuentes, City Attorney Robbins; Director of Community Development Diaz; Associate Planner Gutierrez; Associate Planner Nemeth

III. APPROVAL OF MINUTES — March 15, 2021

The Committee approved the minutes of the March 15, 2021 Real Estate Committee meeting.

IV. PUBLIC COMMENT — None

V. DISCUSSION ITEMS

A. DEVELOPMENT PROPOSALS

1. 9700 Central Avenue – Chevron Station Rebuild

The Committee reviewed the site plan and building elevations for the rebuilt Chevron gas station proposal. The Committee indicated its support for the project and looked forward to its completion and its updated appearance.

B. REQUESTS — None

C. PROPOSED ORDINANCES

1. Accessory Dwelling Unit (ADU) Ordinance – Review revised draft ordinance to update Chapter 11.23 of the Montclair Municipal Code regarding new state requirements related to ADUs within the City.

The Committee reviewed the revised ordinance previously discussed at the March 15, 2021 meeting. Chair Dutrey sought clarification about specific portions of the draft ordinance to which staff and City Attorney Robbins responded. Both Chair Dutrey and Vice Chair Martinez indicated their support for the draft ordinance and the next steps in the review process leading to its adoption. Director Diaz stated that staff hoped to have the Ordinance presented to Planning Commission at one of the upcoming meetings in June.

2. **Wireless Telecommunication Facility Ordinance** - Review draft ordinance to update Chapter 11.73 of the Montclair Municipal Code regarding new wireless telecommunication facilities within the City.

The Committee viewed a short power point presentation providing background for the draft proposal to update the City's current Wireless Telecommunication Facilities Ordinance. Staff explained the need to update the current ordinance to be in alignment with Federal and State requirements. Staff further indicated new provisions in the proposed Ordinance that expand allowable locations, establish new standards for height, design, maintenance, and enforcement. Chair Dutrey recognized the need for a new updated Ordinance.

Mr. James Grice, from Bryan Cave Leighton Paisner LLP, representing an interested telecommunication company, called to indicate his support for the update and to offer up a few revisions for thought. Chair Dutrey directed Mr. Grice to forward his comments/recommendations to staff for consideration. Chair Dutrey mentioned the item would be moving to the Planning Commission and the City Council for review and additional opportunities for comment. Director Diaz stated that staff hoped to have the Ordinance presented to Planning Commission at one of the upcoming meetings in June.

VI. OTHER ITEMS

Chair Dutrey asked staff about the status of review on the Village at Montclair design changes. Acting Deputy City Manager Fuentes indicated that staff had met with the developer and consulting architects on the project for both parties. He indicated that staff was awaiting revised plans based on discussion from the meeting and the City's resolve to maintain the overall architectural design of the project as approved by the City Council.

VII. ADJOURNMENT

At 6:35 p.m., Chair Dutrey adjourned the Real Estate Committee. The Committee is scheduled to next meet on Monday, June 21, 2021.

Submitted for Real Estate Committee approval,



Michael Diaz
Community Development Director

MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
OCTOBER 4, 2021, AT 6:18 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 6:18 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 September 20, 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 September 20, 2021.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

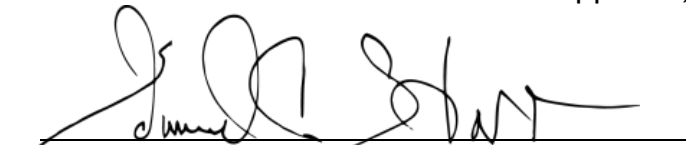
At 6:19 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:43 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 6:43 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, OCTOBER 4, 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 Mayor Pro Tem/Vice Chair Ruh.

III. PLEDGE OF ALLEGIANCE

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

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; Finance Manager Kulbeck; City Attorney Robbins; City Clerk Myrick

Absent: Council Member/Director Lopez

V. PRESENTATIONS

A. COVID-19 Community Recognition Award

Mayor Dutrey announced tonight's COVID-19 Community Recognition Award recipient is **Montclair Hospital Medical Center** for going above and beyond to assist the Montclair community during the COVID-19 pandemic. He stated that over the last year and a half, **Montclair Hospital Medical Center (MHMC)** has seen almost 1,800 patients either in their emergency department or as inpatients and has performed almost 5,000 COVID-19 tests. He stated the City is very appreciative for the assistance **MHMC** provided our employees and the community at large with administering COVID-19 vaccines, understanding that over 4,000 vaccines have been administered by **MHMC** over the last year. He thanked the hospital's representatives for providing health care to our community during this unprecedented pandemic and, along with the City Council, presented a Certificate of Recognition to **MHMC** Chief Executive Officer **Gail Aviado**, Director of Pharmacy **Dr. Drupad**, and Employee Health Director **Janaya Eggert**.

VI. PUBLIC COMMENT — None

VII. PUBLIC HEARINGS

A. **Second Reading — Consider Adoption of Ordinance No. 21-996 Amending Portions of Title 11 of the Montclair Municipal Code Relating to Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JADUs) in the City**

Mayor Dutrey declared it the time and place for a public hearing related to Ordinance No. 21-996 and invited members of the audience to provide comments.

There being no one in the audience wishing to speak and no written comments submitted in relation to this item, Mayor Dutrey closed the public hearing and returned the matter to the City Council for consideration.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Martinez, and carried that Ordinance No. 21-996 be read by number

and title only, further reading be waived, and that the City Council adopt Ordinance No. 21-996.

Ordinance No. 21-996 was adopted 4-0 by the following roll call vote:

AYES: Martinez, Johnson, Ruh, Dutrey
NOES: None
ABSTAIN: None
ABSENT: Lopez

VIII. CONSENT CALENDAR

Moved by Council Member/ Director Johnson, seconded by Mayor Pro Tem/Vice Chair Ruh, and carried unanimously 4-0 (Lopez absent), the City Council approved the Consent Calendar as presented:

A. Approval of Minutes

1. Regular Joint Meeting — September 20, 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 September 20, 2021 regular joint meeting.

B. Administrative Reports

1. 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

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.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated October 4, 2021, totaling \$699,803.61; and the Payroll Documentation dated August 29, 2021, amounting to \$620,776.77 gross, with \$446,651.17 net being the total cash disbursement.

C. Agreements

1. Approval of Agreement No. 21-60 with the California Highway Patrol for Use of the Montclair Police Department Firearms Shooting Range

The City Council approved *Agreement No. 21-60* with the California Highway Patrol for use of the Montclair Police Department firearms shooting range.

D. Resolutions

1. Adoption of Resolution No. 21-3302 Authorizing the City Manager or Public Works Director to Execute All Right-of-Way Certification and Other Documents for All State and/or Federally Funded Projects and to Sign All State and/or Federal Funding Documents, Including Agreements and Amendments Thereto, for Grant Funding Procedures Associated with State and Federal Funds with the California Department of Transportation

The City Council adopted Resolution No. 21-3302 authorizing the City Manager or Public Works Director to execute all Right-of-Way Certification and other documents for all state and/or federally funded projects and to sign all state and/or federal funding documents, including agreements and amendments

thereto, for grant funding procedures associated with state and federal funds with the California Department of Transportation.

2. Adoption of Resolution No. 21-3319 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges

The City Council adopted Resolution No. 21-3319 authorizing placement of liens on certain properties for delinquent sewer and trash charges.

IX. PULLED CONSENT CALENDAR ITEMS — None

X. COUNCIL WORKSHOP

A. Determination of Infrastructure Projects to be Funded by Lease Revenue Bond Issue 2021A

The City Council continued this presentation to an adjourned meeting on Monday, October 18, 2021, at 5:45 p.m.

XI. COMMUNICATIONS

A. Department Reports

1. Police Department — Pink Patches for Breast Cancer Awareness Month

Captain Reed stated every year, the Police Department participates in Breast Cancer Awareness Month by wearing pink patches on their uniforms, pink undershirts, or department-approved pink polo shirts for non-safety employees. He advised participants must make a minimum donation of \$30 to **Loma Linda Medical Center's** Breast Cancer Care Program in order to obtain the patch or shirt but many donate much more. He noted that, as the father of two young girls, seeing a uniformed police officer wearing a pink patch gets their attention and is a perfect opportunity to educate that breast cancer affects one in eight women and is the second leading cause of death for women behind lung cancer.

2. Human Services Department — Community Flu and COVID-19 Vaccine Events

Director of Human Services Richter announced that San Bernardino County Department of Public Health will be providing free flu shots and Pfizer Covid-19 booster shots on Tuesday, October 12, from 10:00 a.m. to 2:00 p.m. in the Montclair Community Center. County residents can receive both the annual flu and COVID-19 booster shots together. Those who haven't been vaccinated can receive their first dose during the same event. Appointments are available at myturn.ca.gov and walk-ins are welcome. The County will be back again on Tuesday, November 9, from 10:00 a.m. to 2:00 p.m. to give, the annual flu shot, COVID-19 boosters, and the second COVID-19 vaccine doses.

She noted as a reminder that COVID-19 testing and vaccines are available at **Montclair Place** from 10:00 a.m. to 6 p.m. every Monday through Saturday, and the COVID-19 testing bus provided by the State and **Optum Serve** is still based at the **Kids Station** parking lot at the **Montclair Transcenter**. This site is open for testing Wednesday through Sunday from 11:00 a.m. to 7:00 p.m.—walk-ins welcome.

B. City Attorney — No comments

C. City Manager/Executive Director

City Manager Starr recognized Public Safety Administrative Services Supervisor **Robert Pipersky** on his day of retirement, noting he has served the City for over 40 years, spending most of his career in

public service as a Police Officer. He stated as a field training officer, **Rob** trained at least half of the City's police force over the years since he started, including our current Police Chief. He thanked **Rob** for his service to the Montclair community.

Mayor Dutrey stated his son was pulled over by **Rob** when he first started driving, and he was given two choices: **Rob** could issue him a ticket, or call his mom. His son chose the latter. He congratulated him on his retirement.

D. Mayor/Chair

Mayor/Chair Dutrey made the following comments:

1. He advised the **Montclair High School** football game this weekend went well, noting there was a higher security presence at the game due to the incident at the prior game.
2. He announced the good news that the City's bond rating went up for the upcoming bond issues.

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

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:

- (a) He reported his attendance at the **League of California Cities (CalCities)** Annual Conference, noting the sessions were very educational and it was good to visit with other officials and vendors.
- (b) He regrettably reported missing the memorial service for Council Member Emeritus **Leonard Paulitz** last week due to a work commitment. He stated **Leonard** served this community with dignity and integrity—not because he had to, but because he wanted to.
- (c) He urged those who are not vaccinated to get their COVID-19 vaccine, noting this county has the lowest vaccination rate in southern California.
- (d) He noted there has been progress on the **Gold Line**, noting the state legislature is looking at getting funding approved next year since this year's funding was already committed to the state's high speed train project.
- (e) He congratulated **Mr. Pipersky** on retiring, noting his retirement party is tonight and he knows that he and the rest of the City Council wish they could be there.
- (f) In honor of **MHMC's** recognition tonight, he thanked all of the hospital's employees and urged them to keep themselves safe.

2. Council Member/Director Johnson made the following comments:

- (a) She provided an early reminder for staff to look into maintenance for the splash pad to ensure it will be operational for summer next year.
- (b) She stated she had a wonderful time at the **CalCities** conference and enjoyed telling other cities about what Montclair is doing, especially to address homelessness. She noted one recurring theme was for public safety to be involved with the community, which she feels Montclair's does a great job doing with their presence at City events. She noted she also heard a fascinating story from the conference's keynote speaker and the man who invented **FLAMIN' HOT CHEETOS®**, **Richard Montes**, who was a janitor at the **Frito Lay** factory. He promoted the idea that it doesn't matter who you are—you can accomplish anything. She added another interesting seminar covered

attracting the next generation workforce, which includes bringing school children into government settings to foster an interest in public service. She recalled when she sat on the Community Action Committee (CAC) there used to be a **MHS** student who sat at the dais with the CAC members. She suggested the City provide more similar mentorship opportunities to the youth of the community.

- (c) She stated **Soroptomist International** is accepting applications for the **Live Your Dream Award** of up to \$16,000 for single mothers to advance their education, and asked everyone to spread the word to those who could benefit and encourage them to apply.
- (d) She announced that from now through October 31st, **Montclair Place** is hosting a pumpkin patch in its parking lot at the corner of Central Avenue and Moreno Street with a taco stand and fun activities for the kids. She advised the hours are Mondays through Thursdays from 4:00 to 9:00 p.m.; Fridays from 4:00 to 10:00 p.m.; and Saturdays & Sundays from noon to 10:00 p.m.

She advised the mall is also hosting kids events every other Thursday at 4:00 p.m. starting October 7th and going through December, which will all take place on the lower level in front of the **Kids Empire** and **Barnes & Noble**. She advised the next event will be an interactive music show.

- 3. Council Member/Director Martinez made the following comments:
 - (a) She noted at the **CalCities** conference, many cities were recognized for their creative and innovative ideas, and she is excited to explore new ideas in Montclair like incorporating more youth involvement.
 - (b) She congratulated **Rob** on his retirement.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of September 20, 2021

The City Council received and filed the minutes of the Personnel Committee meeting of September 20, 2021, for informational purposes.

XII. CLOSED SESSION — None

XIII. CLOSED SESSION ANNOUNCEMENTS — None

XIV. ADJOURNMENT

At 7:34 p.m., Chair Dutrey adjourned the Successor Agency Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

At 7:34 p.m., Mayor Dutrey adjourned the City Council to Monday, October 18, 2021 at 5:45 p.m. for a Council Workshop on the Infrastructure Bond projects.

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



Andrea Myrick
City Clerk

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

SEPTEMBER 30, 2021

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CASH AND INVESTMENTS BY TYPE

**CITY OF MONTCLAIR
STATEMENTS OF COMPLIANCE WITH THE INVESTMENT POLICY
AND INVESTMENT STRATEGY**

SEPTEMBER 30, 2021

COMPLIANCE STATEMENT

The City has the following amount invested in various financial instruments. This conforms with the investment policy approved by the City Council.

Total Investments \$ 32,784,379

During the current month the City was in compliance with the internal control procedures set forth in the Investment Policy.

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund and other investments authorized in the Investment Policy. The City has sufficient monies available to meet expenditures during the next six month period.

CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENTS BY FUND
AS OF SEPTEMBER 30, 2021

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ (2,362,534.35)	\$ 1,867,254.95	\$ 2,686,824.58	-	\$ (3,182,103.98) (1)
Gas Tax Fund	(184,871.85)	110,955.53	116,816.16	-	(190,732.48) (2)
Road Maintenance - Section 2032	1,717,357.73	27,779.35	22,262.14	-	1,722,874.94
Measure I Fund	3,699,031.71	76,030.29	-	-	3,775,062.00
Traffic Safety	120,890.88	2,823.59	-	-	123,714.47
Disability Access Fund - Bus. License	38,592.10	796.00	-	-	39,388.10
Park Maintenance	81,073.30	5,924.80	2,510.63	-	84,487.47
Park Development	1,149,207.06	-	-	-	1,149,207.06
CDBG	(60,211.03)	36,625.14	13,216.32	-	(36,802.21) (2)
SB2 Planning Grant	-	-	966.00	-	(966.00) (2)
Air Quality Improvement Trust	231,144.54	-	-	-	231,144.54
SB City Cares Act Infrastructure	(914,897.24)	-	-	-	(914,897.24) (2)
Senior Nutrition Program	(56,839.95)	6,525.41	23,121.20	-	(73,435.74) (2)
American Rescue Plan	4,794,353.00	-	-	-	4,794,353.00
Forfeiture Fund - State	113,973.44	3,710.67	-	-	117,684.11
Proposition 30/SB 109	122,490.99	-	946.99	-	121,544.00
SB 509 Public Safety	182,329.41	43,668.00	37,051.87	-	188,945.54
Forfeiture Fund-Federal/DOJ	408,328.10	-	-	-	408,328.10
Asset Seizure Fund	6,775.15	-	6,775.13	-	0.02
Section 11489 Subfund	41,740.95	654.83	140.00	-	42,255.78
Fed Asset Forfeiture-Treasury	113,959.76	-	-	-	113,959.76
School District Grant Fund	-	-	-	-	-
State Supplemental Law Enforcement	348,891.77	9,793.31	-	-	358,685.08
PC 1202.5 Crime Prevention	2,125.88	5.94	-	-	2,131.82
Recycling Grant Fund	70,375.67	-	-	-	70,375.67
Homeless Emergency Aid Program	(51,474.86)	36,734.00	-	-	(14,740.86) (2)
Bureau of Justice Assistance	-	-	-	-	-
Statewide Park Dev Grant	9,605.84	-	6,570.80	-	3,035.04
Homeless Housing Assist Preven	280,376.13	-	106,976.15	-	173,399.98
After School Program Fund	-	-	-	-	-
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	297,168.28	-	-	-	297,168.28
OSMD Immunization Grant	(3,298.44)	-	34,001.38	-	30,702.94
Kaiser Permanente Grant	4,619.88	-	-	-	4,619.88
Resource Center Grant - OMSD	14,110.20	28,500.00	2,192.30	-	40,417.90
Title IIB Sr Support Services	20,574.03	2,494.08	25,084.29	-	(1,996.18) (2)
Healthy Community Strategic Plan	16,935.94	-	-	-	16,935.94
ASES Supplemental Grant	114,453.61	-	-	-	114,453.61
E.M.S. - Paramedic Fund	(42,173.59)	4,409.08	-	-	(37,764.51) (3)
Economic Development	6,088,092.67	-	80,349.52	-	5,987,743.15
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,362,569.80	454,604.74	371,740.92	-	2,445,433.62
Sewer Replacement Fund	2,113,873.08	-	-	-	2,113,873.08
CFD 2011-1 (Paseos)	139,689.47	-	7,306.12	-	132,383.35
CFD 2011-2 (Arrow Station)	90,737.61	-	-	-	90,737.61
Inland Empire Utility Agency	2,825,159.11	294.50	556,457.35	-	2,268,701.76
Sewer Expansion Fee Fund	605,325.28	-	-	-	605,325.28
Developer Impact Fees - Local	1,171,272.90	-	-	-	1,171,272.90
Developer Impact Fees - Regional	234,067.27	-	-	-	234,067.27
Burtec Pavement Impact Fees	251,409.56	-	-	-	251,409.56
PUC Reimbursement Fund-MVGS	1,689,981.14	-	-	-	1,689,981.14
Utility Underground In-Lieu	340,516.52	-	-	-	340,516.52
General Plan Update Fee	91,062.79	1,087.26	-	-	92,150.05
Housing Fund	555,708.20	-	-	-	555,708.20
Public Education/Govt. PEG Fee Fund	40,490.73	9,782.51	70,762.50	-	(2,648,080.89) (4)
Infrastructure Fund	(2,630,618.38)	53,299.99	8,612.93	-	(2,685,931.32)
COVID-19	(274,687.37)	-	-	-	(274,687.37)
Successor Agency Bonds-Taxable	4,793,100.88	-	-	-	4,793,100.88
Successor Agency Bonds-Tax Exempt	8,215,409.20	-	-	-	8,215,409.20
2014 Lease Revenue Bond Proceeds	(1,873.50)	-	-	-	(1,873.50)
2014 Lease Revenue Bond Debt Svc	(5,800.80)	185,740.10	285,756.58	-	(287,630.08)
2021 Lease Revenue Bond Debt Svc	-	638,976.92	1,771,818.75	-	(1,591,873.45) (5)
Contingency Fund	233,836.96	-	-	-	233,836.96
Assigned General Fund Reserves	9,428,188.50	9,000.00	2,950.00	-	9,434,238.50
TOTALS	\$ 48,663,486.44	\$ 3,617,470.99	\$ 6,241,190.61	\$ -	\$ 46,039,766.82

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this negative, the City is not utilizing restricted resources.
- (2) These are reimbursable grant funds that utilize general pool monies initially to cover expenditures pending reimbursement from the granting agencies. Therefore, it is not uncommon for these to be negative until that reimbursement is received.
- (3) This fund has operational deficits annually. At the end of the fiscal year it is restored by a General Fund Transfer.
- (4) The Infrastructure Fund receives transfers from other funds to accomplish infrastructure projects. Those transfers are usually recorded when the projects nears completion or prior to mid-year budget preparation. Any negative in that fund will be eliminated at those times. Transfers from these funds (C.D.B.G., Gas Tax, Measure I, etc.) may go negative on cash pending collections of these revenues. In this way we can determine if obligations for projects are exceeding current resources.
- (5) This debt service operation utilizes transaction and use taxes which are part of the sales tax and Successor Agency property taxes. These have been sufficient in prior fiscal years to cover the necessary debt service; however, they are not completely received until fiscal year-end. Once debt service is covered the excess will be transferred to the General Fund.

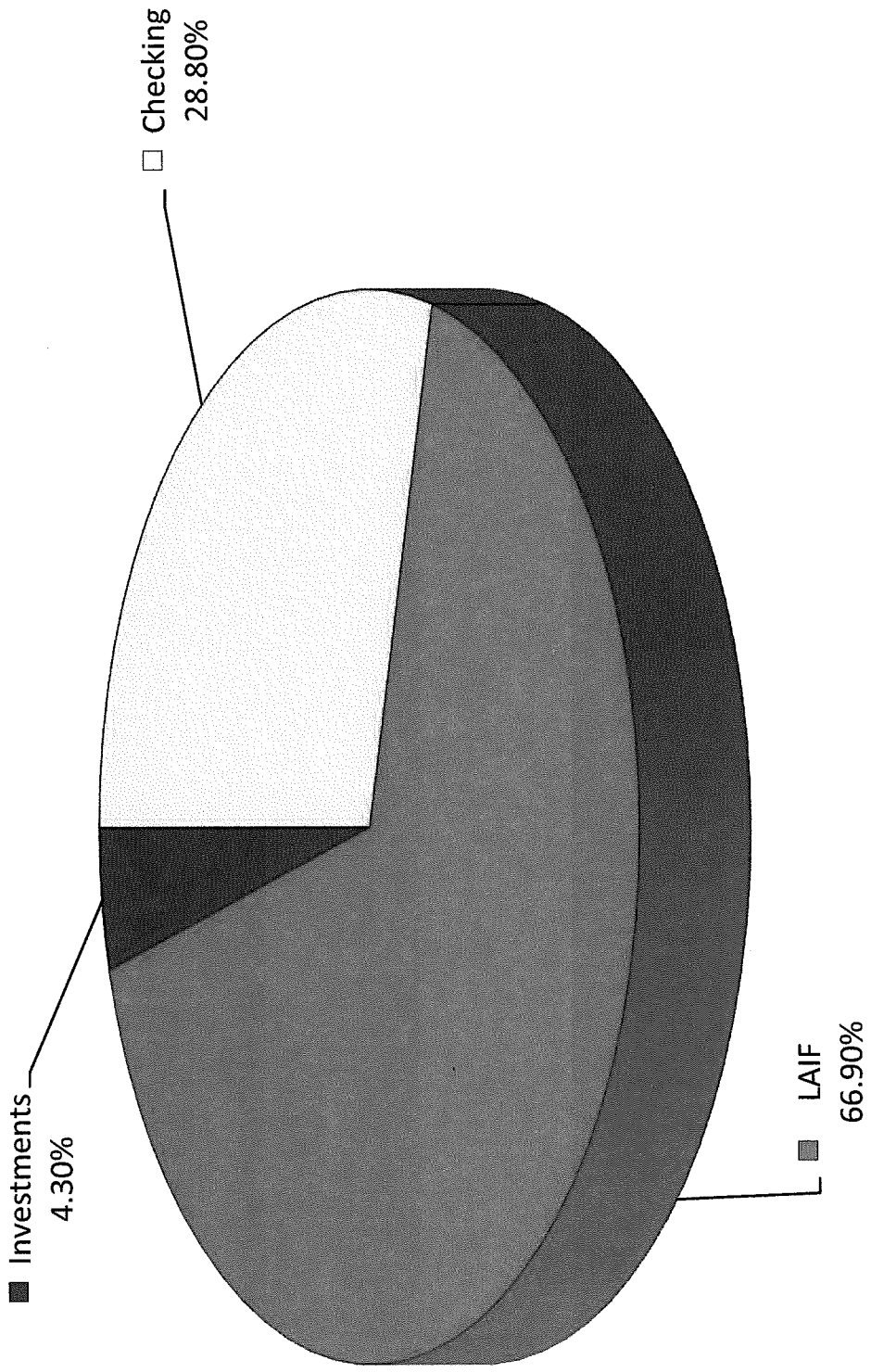
SCHEDULE 3

CITY OF MONTCLAIR
 STATEMENT OF CASH AND INVESTMENT ACCOUNTS
 AS OF SEPTEMBER 30, 2021

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 13,252,919.57
Asset Seizure Account							\$ 2,468.67
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				0.210%	30,823,470.12	30,784,378.58	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,823,470.12</u>		\$ 32,784,378.58
U.S. AGENCY SECURITIES							
					\$ -		\$ -
TOTAL							<u>\$ 46,039,766.82</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
September 30, 2021
Total Cash & Investments \$46,209,279



**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
TREASURER'S REPORT**

FOR THE MONTH ENDING

September 30, 2021

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
September 30, 2021**

COMBINED OPERATING FUND

Operating	<u>28,707.85</u>	\$ 28,707.85
-----------	------------------	--------------

LRPRP Fund

Operating	<u>0.00</u>	\$ 0.00
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RORF

	620,730.96	
RORF Area I	0.00	
RORF Area II	0.00	
RORF Area III	0.00	
RORF Area IV	0.00	
RORF Area V	0.00	
RORF Area VI	0.00	\$ 620,730.96

TOTAL CASH

\$ 649,438.81

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
September 30, 2021**

Checking Account

US Bank

649,438.81

TOTAL CASH

649,438.81

NOTE:

In accordance with State law, the Successor Agency receives the monies necessary to cover its obligations for the upcoming six month period. The monies are received in January and June of each year.

The Successor Agency has sufficient funds available to meet expenditures during the upcoming six-month period.

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
WARRANT REGISTER**

FOR THE MONTH ENDING

September 30, 2021

City of Montclair
 Final Warrant Register
 Council Date 10/18/2021
 Regular Warrants
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	8,219.06	8,219.06
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	0.00	8,219.06	
September 2021 Total			8,219.06

Note: Reimburse City for 9/2, 9/16, 9/30 payrolls

Vice Chair Ruh

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR
 SinglePoint
 Reported Activity From 09/01/2021 To 09/30/2021
 Printed on 10/11/2021 at 10:05 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/30/2021	\$2436.380	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 09/30/21 Payroll
 Initiate Date 09/30/2021
 Initiate Time 11:08AM CDT
 Initiated By JKULBECK
 Completed Date 09/30/2021
 Completed Time 11:08AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/16/2021	\$3247.910	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 09/16/21 Payroll
 Initiate Date 09/16/2021
 Initiate Time 10:08AM CDT
 Initiated By JKULBECK
 Completed Date 09/16/2021
 Completed Time 10:08AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/08/2021	\$2534.770	153499275813	153499275805	Completed

Debit Account Name CITY OF MONTCLAIR SUCCESSOR AGENCY
 Debit Account Type DDA
 Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
 Credit Account Type DDA
 Template Name .
 Memo Reimburse City for 09/02/21 Payroll
 Initiate Date 09/08/2021
 Initiate Time 12:38PM CDT
 Initiated By JKULBECK
 Completed Date 09/08/2021
 Completed Time 12:38PM CDT

Total Number of Book Transfers: 3
 Total Amount of Book Transfers: \$8,219.06

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT
FOR THE MONTH ENDING**

September 30, 2021

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SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS

CASH AND INVESTMENTS GRAPH

Schedule 1

CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
September 30, 2021

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			542,131.23
Investments			
LAIF	0.21%	1,711,906.29	<u>1,711,764.26</u>
TOTAL CASH & INVESTMENTS			<u><u>2,253,895.49</u></u>

NOTE:

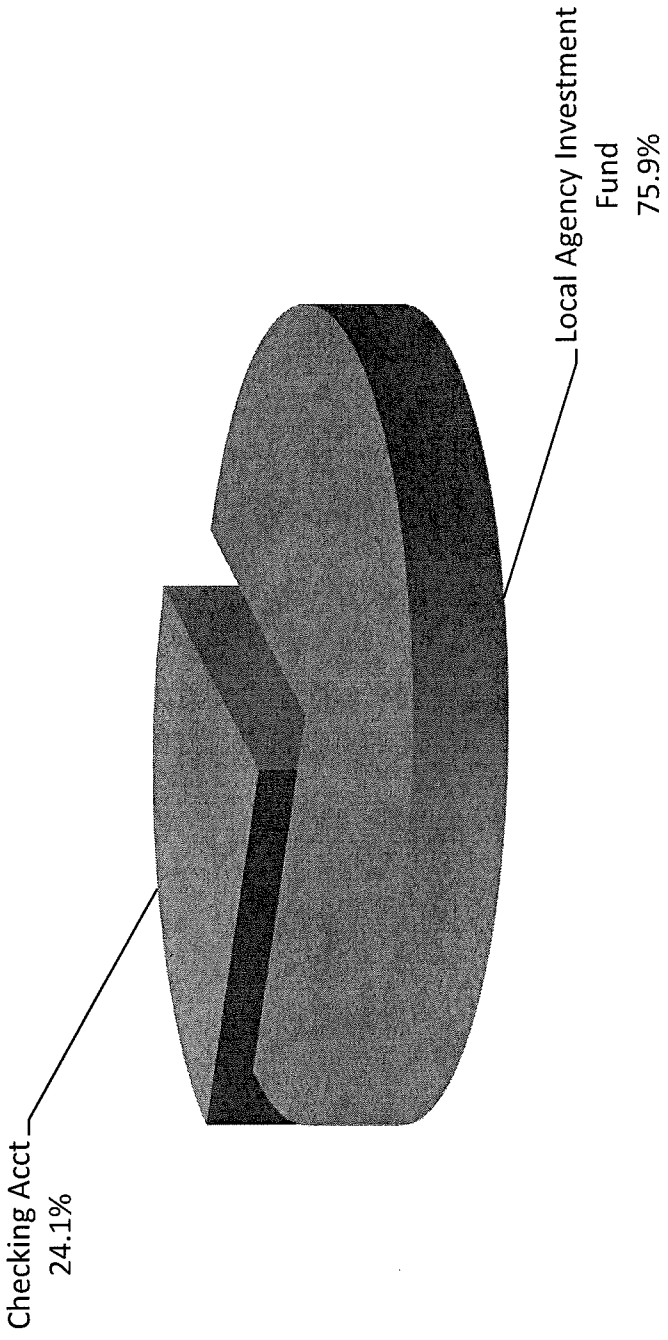
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

The Corporation has sufficient funds available to meet expenditures during the upcoming six-month period.

The Corporation is in compliance with the internal control procedures set forth in its Investment Policy.

**CITY OF MONTCLAIR
HOUSING CORPORATION
CASH AND INVESTMENTS GRAPH
September 30, 2021**

Total Cash & Investments - \$2,253,895



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

September 30, 2021

City of Montclair
Final Warrant Register
Council Date 10/18/2021
Regular Warrants
Checking Account: MHC

Warrants	ACH Transfers	Voided Checks	US Bank transfers	Totals
38,051.26	0.00	0.00	14,537.84	52,589.10

September 2021 Total

52,589.10

US Bank transfers:

Reimburse City for 09/02 payroll

Reimburse City for 09/16 payroll

Reimburse City for 09/30 payroll

Vice Chair Ruh

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 10/11/2021 9:55 AM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5222	Land012	Landscape Maintenance Unlimited	09/02/2021	4,943.00
5223	Mont002	City of Montclair	09/02/2021	10,579.42
5224	Mont074	Monte Vista Water District	09/02/2021	6,861.60
5225	Sout018	Southern California Edison Co	09/02/2021	780.69
5226	Sout021	Southern California Gas Co	09/02/2021	382.39
5227	Mont002	City of Montclair	09/16/2021	1,870.20
5228	Mont074	Monte Vista Water District	09/16/2021	2,042.41
5229	Sout018	Southern California Edison Co	09/16/2021	699.79
5230	Sout021	Southern California Gas Co	09/16/2021	432.59
5231	Hugo001	Hugo Jaramillo	09/30/2021	750.00
5232	land012	Landscape Maintenance Unlimited	09/30/2021	6,808.00
5233	Mont002	City of Montclair	09/30/2021	70.64
5234	Mont074	Monte Vista Water District	09/30/2021	1,655.42
5235	Sout018	Southern California Edison Co	09/30/2021	175.11
Report Total (14 checks):				38,051.26

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 09/01/2021 To 09/30/2021

Printed on 10/11/2021 at 10:04 AM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/30/2021	\$4225.760	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 09/30/21 Payroll
Initiate Date 09/30/2021
Initiate Time 11:08AM CDT
Initiated By JKULBECK
Completed Date 09/30/2021
Completed Time 11:08AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/16/2021	\$5901.610	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 09/16/21 Payroll
Initiate Date 09/16/2021
Initiate Time 10:08AM CDT
Initiated By JKULBECK
Completed Date 09/16/2021
Completed Time 10:08AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
09/08/2021	\$4410.470	153499275821	153499275805	Completed

Debit Account Name MONTCLAIR HOUSING CORPORATION
Debit Account Type DDA
Credit Account Name CITY OF MONTCLAIR GENERAL ACCOUNT
Credit Account Type DDA
Template Name .
Memo Reimburse City for 09/02/21 Payroll
Initiate Date 09/08/2021
Initiate Time 12:38PM CDT
Initiated By JKULBECK
Completed Date 09/08/2021
Completed Time 12:38PM CDT

Total Number of Book Transfers: 3
Total Amount of Book Transfers: \$14,537.84

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
September 30, 2021**

Schedule 1

CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
September 30, 2021

	<u>Amount</u>
Checking Account	
US Bank	4,471.16
TOTAL CASH	\$ <u>4,471.16</u>

NOTE:

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT
FOR THE MONTH ENDING
September 30, 2021**

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
September 30, 2021**

	<u>Amount</u>
Checking Account	
US Bank	4,471.16
TOTAL CASH	\$ <u>4,471.16</u>

NOTE:

During the upcoming month, surplus moneys will be invested in the Local Agency Investment Fund. The MHA has sufficient monies available to meet expenditures during the next six month period.

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER
FOR THE MONTH ENDING
September 30, 2021**

City of Montclair
Final Warrant Register
Council Date 10/18/2021
Regular Warrants
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00

September 2021 Total 0.00

Vice Chair Ruh