

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

AGENDA

Monday, December 20, 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, AND MONTCLAIR COMMUNITY FOUNDATION**

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

Monday, December 20, 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]

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. Community Activities Commission Presentation of 2021 Holiday Home
Decoration Contest Winners**

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

- A. Consider Adoption of Resolution No. 21-3329 Making Findings Pursuant to the California Environmental Quality Act and Approving a Conditional Use Permit and Precise Plan of Design to Allow the Establishment of a 3,950 Sq. Ft. Full-Service Restaurant with Drive-Thru Service and Outdoor Dining (Panera Bread Café) Within the Boundaries of the North Montclair Downtown Specific Plan Located at 9052 Central Avenue and 5220 Moreno Street [CC] 6

VIII. CONSENT CALENDAR

- A. Approval of Minutes
 - 1. Regular Joint Meeting — November 15, 2021 [CC/SA/MHC/MHA/MCF] 299
- B. Administrative Reports
 - 1. Consider Receiving and Filing of Treasurer’s Report [CC] 54
 - 2. Consider Approval of Warrant Registers & Payroll Documentation [CC] 55
 - 3. Consider Receiving and Filing of Treasurer’s Report [SA] 56
 - 4. Consider Approval of Warrant Register [SA] 57
 - 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 58
 - 6. Consider Approval of Warrant Register [MHC] 59
 - 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 60
 - 8. Consider Approval of Warrant Register [MHA] 61
 - 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] 62
 - 10. Consider Amending the 2019–2024 Capital Improvement Program to Add the Zone 5 and 6 Street Rehabilitation Project [CC]
Consider Authorizing a \$4,000,000 Appropriation from 2021 Lease Revenue Bond Funds for Costs Related to the Zone 5 and 6 Street Rehabilitation Project [CC]
Consider Authorizing Staff to Advertise for Bid Proposals for Construction of the Zone 5 and 6 Street Rehabilitation Project [CC] 64
 - 11. Consider Authorizing the Purchase of Three 2022 Ford Explorer Interceptor Utility Vehicles from Fritts Ford in the Total Amount of \$116,793.90 [CC]
Consider Declaring Two (Model Years 2008 & 2011) Ford Crown Victoria Police Interceptor Vehicles and One 2019 Ford Explorer Interceptor Utility Vehicle as Surplus and Available for Parts or for Sale at Auction [CC] 68
 - 12. Consider Authorizing a \$94,846.03 Allocation from the Equipment Replacement Fund for the Purchase of Two Vehicles for Use by the Code Enforcement Division [CC]
Consider Authorizing the Purchase of Two 2022 Ford Explorer Interceptor Utility Vehicles from Fritts Ford in the Total Amount of \$94,846.03 [CC]

Consider Declaring One 2005 Ford Taurus Vehicle and One 2006 Ford Crown Victoria Interceptor Vehicle as Surplus and Available for Parts or for Sale at Auction [CC]

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13. Consider Authorizing the Purchase of a 2022 Ford Super Duty F-250 Pickup Truck from National Fleet Auto Group for \$44,674.16 [CC]

Consider Authorizing a \$4,674.16 Allocation from the Equipment Replacement Fund for the Purchase and Installation of Beacon Lights and Strobes for the Vehicle [CC]

Consider Declaring One 2003 Ford F-250 Pickup Truck as Surplus and Available for Parts or for Sale at Auction [CC]

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14. Consider Authorizing the Purchase of a John Deere 1600 Turbo Series III Commercial Wide Area Mower from Stotz Equipment for \$82,789.58 for Turf Maintenance at City Parks [CC]

Consider Authorizing a \$2,789.58 Appropriation from the Equipment Replacement Fund for Use toward the Purchase of the Mower [CC]

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15. Consider Authorizing City Manager Edward C. Starr to Sign a Joint 12-Month Notification Letter to the Inland Empire Utilities Agency for the Chino Basin Regional Sewage Service Contract - Exercise of Option for Continued Service [CC]

75

16. Consider Approval of the Hiring of Retired Annuitant Rosemary Hoerning as a City Engineering Consultant and Authorization to Pay Wages with Lease Revenue Bond Funds Allocated for Consulting Fees [CC]

78

17. Consider Approval of the Montclair Housing Authority Annual Report Pursuant to Section 3416.1(f) of the Health and Safety Code (SB 341) for Fiscal Year 2020-21 [CC/MHA]

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18. Consider Review and Acceptance of the Montclair Housing Authority Annual Report for Fiscal Year 2020-21 [MHA]

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C. Agreements

1. Consider Approval of Agreement No. 21-04-I-106 (Case No. 2021-06), an Irrevocable Annexation Agreement with Jose A. Palma for 4168 Howard Street, Montclair, CA 91763 (APN 1012-241-04-0-000) [CC]

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2. Consider Approval of Agreement No. 21-66 with Greyhound Lines, Inc. for Shared Use of a Single Bus Bay for Daily Commercial Bus Passenger Service and Ground Space for an Employee-Operated Ticket Vending and Customer Service Kiosk at the Montclair Transcenter [CC]

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3. Consider Approval of Agreement No. 21-79 with Barbara Pennell, a Purchase and Sale Agreement for Property Located at the Northwest Corner of Central Avenue and Richton Street [CC]

Consider Authorizing a \$1,550,000 Appropriation from the Economic Development Fund for Acquisition and Closing Costs Associated with Agreement No. 21-79 [CC]

Consider Authorizing City Manager Edward C. Starr to Sign Agreement No. 21-79 and All Other Documents Related to Acquisition of the Property [CC]

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4. Consider Approval of Agreement No. 21-80 with Flock Group Inc. for a 2-Year Lease for 40 Automated License Plate Reader Cameras [CC]
Consider Authorizing a \$110,000 Appropriation from the Federal Asset Forfeiture Fund to Pay Costs Associated with Agreement No. 21-80 [CC] 143
5. Consider Approval of Agreement No. 21-81 with Willdan Engineering, Inc., for Electrical Engineering and Design Services for the Electric Vehicle Charging Station Project [CC]
Consider Authorizing the City Manager to Amend the Scope of Services as Necessary for a Contingency Amount Not to Exceed \$5,000 [CC] 183
6. Consider Approval of Agreement No. 21-82 with Kaiser Foundation Hospitals to Award a Grant in the Amount of \$10,000 to Support the Montclair to College Program [MCF]
Consider Authorizing Executive Director Edward C. Starr to Sign Agreement No. 21-82 [MCF] 201
7. Consider Approval of Agreement No. 21-83 with CSG Advisors for Municipal Advisory Services to Evaluate Augusta Communities LLC's Proposed 2022 Indenture of Trust to Refinance its Series 2012A Mobile Home Park Revenue Refunding Bonds and Series 2012B Mobile Home Park Subordinate Revenue Refunding Bonds Issued by the Independent Cities Finance Authority [CC]
Consider Authorizing City Manager Edward C. Starr to Sign Agreement No. 21-83 with CSG Advisors [CC] 207
8. Consider Approval of Agreement No. 21-84 with Loma Linda University Children's Hospital, a Memorandum of Understanding for the Montclair Police Department's Use of the Children's Assessment Center [CC]
Consider Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign Agreement No. 21-84 [CC] 216
9. Consider Approval of Agreement No. 21-85 with Transtech to Prepare a School Area Signage Plan for Vernon Middle School [CC] 228
10. Consider Approval of Agreement No. 21-86-I-107 (Case No. 2021-40), an Irrevocable Annexation Agreement with Pomona Hershey Properties, LLC for 11185 Roswell Avenue, Pomona, CA 91766 (APN 1012-411-51-0000) [CC] 244
11. Consider Approval of Agreement No. 21-87 with HDR Environmental, Operations and Construction, Inc. for the Preparation of a Spill Prevention Control and Countermeasure Plan for the Police Facility [CC]
Consider Authorizing a \$14,200 Appropriation from the Contingency Fund for Costs Associated With Agreement No. 21-87 [CC] 250
12. Consider Approval of Agreement No. 21-88 with San Bernardino County Fire Protection District, a Memorandum of Understanding for Participation in a 2021 Regional Assistance to Firefighters Grant Opportunity [CC]
Consider Authorizing City Manager Edward C. Starr to Sign Agreement No. 21-88 [CC] 271

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| <ul style="list-style-type: none"> 13. Consider Approval of Agreement No. 21-90 with San Bernardino County Sheriff's Department, a Memorandum of Agreement to Conduct Investigations of Officer-Involved Shootings and In-Custody Deaths [CC] <li style="padding-left: 40px;">Consider Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign Agreement No. 21-90 [CC] | 282 |
| D. Resolutions | |
| <ul style="list-style-type: none"> 1. Consider Approval of Resolution No. 21-3328 Reaffirming the Payment and Reporting the Value of Employer-Paid Member Contributions to the California Public Employees' Retirement System as of July 15, 2002 [CC] | 288 |
| <ul style="list-style-type: none"> 2. Consider Adoption of Resolution No. 21-3331 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 December 20, 2021 through January 19, 2022 [CC] | 291 |
| <ul style="list-style-type: none"> 3. Consider Adoption of Resolution No. 21-3332 Authorizing Submittal of a Claim to the San Bernardino County Transportation Authority for Transportation Development Act Article 3 Funds for the Pacific Electric Trail Bridge Replacement Project [CC] | 295 |

IX. PULLED CONSENT CALENDAR ITEMS

X. COUNCIL WORKSHOP

- A. Implementation of Residential and Commercial Organic Waste Recycling Programs in Compliance with SB 1383 — Burrtec & CalRecycle
(The City Council may consider continuing this item to an adjourned meeting on Tuesday, January 18, 2022, at 5:45 p.m.)

XI. COMMUNICATIONS

- B. Department Reports
- C. City Attorney
- D. City Manager/Executive Director
- E. Mayor/Chairperson
 - 1. Cancellation of Monday, January 3, 2022 Regular Joint Meeting [CC/SA/MHC/MHA/MCF]
- F. Council Members/Directors
- G. Committee Meeting Minutes *(for informational purposes only)*
 - 1. Personnel Committee Meeting — November 15, 2021 [CC] 298

XII. ADJOURNMENT

The regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board scheduled for Monday, January 3, 2022 has been cancelled due to a lack of quorum. The next regular joint meeting will be held on Tuesday, January 18, 2022, 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 documents via e-mail.

If you need special assistance to participate in this meeting, please contact the City Clerk's Office at (909) 625-9416 or e-mail cityclerk@cityofmontclair.org. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II)

I, Andrea M. 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, December 16, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	LDU050/325/375
SECTION:	PUBLIC HEARINGS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	A	PREPARER:	C. CALDWELL

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 21-3329 MAKING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING A CONDITIONAL USE PERMIT AND PRECISE PLAN OF DESIGN TO ALLOW THE ESTABLISHMENT OF A 3,950 SQ. FT. FULL-SERVICE RESTAURANT WITH DRIVE-THRU SERVICE AND OUTDOOR DINING (PANERA BREAD CAFÉ) WITHIN THE BOUNDARIES OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN LOCATED AT 9052 CENTRAL AVENUE AND 5220 MORENO STREET

REASON FOR CONSIDERATION: All land use and design review entitlements within the boundaries of the North Montclair Downtown Specific Plan require public hearing review and approval by the City Council.

BACKGROUND: The Conditional Use Permit and Precise Plan of Design application, recommended for approval by the Planning Commission, was initiated by co-applicants 5060 Montclair Plaza Lane Holdings Venture, LLC and Target Corporation. The two parties desire to construct a 3,950 sq. ft. Panera Bread Café restaurant with drive-thru service and outdoor dining on a 12,000 square foot site in the Target Shopping Center. The subject site is in the “Town Center - Transition Overlay” zone of the North Montclair Downtown Specific Plan (NMDSP).

The Planning Commission conducted a public hearing on the item at its regularly scheduled meeting on Monday, November 22, 2021. The Planning Commission, by a vote of 5-0, recommended that the City Council make findings pursuant to the California Environmental Quality Act and approve the project under Case No. 2021-32 pursuant to Planning Commission Resolution No. 21-1956 (Exhibit A).

PROJECT DESCRIPTION: The project requires approval of a Conditional Use Permit (CUP) for both the proposed drive-thru service and outdoor patio dining areas, and Precise Plan of Design (PPD) approval for the proposed site plan, building design, landscape plans, and signage. Copies of the building plans were provided in the City Council’s agenda packets and can be downloaded and viewed via the City’s website at <https://www.cityofmontclair.org/documents/panera-bread-cafe-plans/>.

Lot Line Adjustment

An integral part of the proposal is the creation of a new lot to accommodate the proposed Panera Bread Café restaurant pad via a Lot Line Adjustment (LLA). Through the LLA, a new 12,000 sq. ft. lot would be created identical in size to the current lot on which the former Island’s Restaurant presently exists. The former Island’s Restaurant building would be demolished and in its place, a parking field would be constructed to serve as parking for Panera Bread Café customers and the balance of Target Shopping Center patrons, including the in-line stores. The new 12,000 square foot lot would be of sufficient size to accommodate the proposed building footprint, hardscape area, trash enclosure, and drive-thru lane for the new restaurant. The diagram below illustrates the proposed land exchange:

Proposed Lot Line Adjustment

PANERA BREAD BAKERY AND CAFÉ



5060 Montclair Plaza Lane Holdings Venture, LLC currently owns the 12,000 sq. ft. lot on which the former Island's Restaurant building is located. 5060 Montclair Plaza Lane Holdings Venture, LLC would become the owner of the new lot that would in turn be sold to a private developer who will develop the restaurant. Target Corporation will own the land where the former Island's Restaurant building is presently situated. The two property owners, 5060 Montclair Plaza Lane Holdings Venture, LLC, and Target Corporation, are essentially proposing to "swap" equal-sized landmasses to accommodate this project. When the LLA is approved and the property transactions are complete, 5060 Montclair Place Holdings Venture, LLC will no longer retain an interest in any real property in the Target Shopping Center. Neither of the current property owners of the affected lots will develop the restaurant. The final restaurant site would be developed by the new property owner in conjunction with Panera Bread who will, in turn, lease the site.

Conditional Use Permit

The CUP for the project is to allow the following:

- A drive-thru lane for the ordering and pick up of meals without having to leave one's vehicle.
- An outdoor patio dining area with a capacity for approximately 26 seats is provided on the south side of the building and three tables with nine seats on the east side of the building.

No alcohol service will be provided. Proposed business hours for the restaurant are 6:00 a.m. to 10:00 p.m. Monday through Saturday and 7:00 a.m. to 9:00 p.m. on Sundays.

Precise Plan of Design

Site Plan

The proposed drive-thru lane is a single-lane design with a stacking capacity for 11 vehicles. The drive-thru lane begins on the east side of the building where the order menu board and speaker are located, then wraps around the backside of the building. The pick-up window is located on the west side of the building. A new parking field east of the restaurant would be developed with fully-constructed curbs, aisles, planter areas, sidewalks, and 53 parking spaces including three accessible spaces adjacent to the building with one van-accessible parking space. The parking spaces for the restaurant would be located on the Target Corporation property but would be available for Panera's use through a *Fourth Amendment to Declaration of Restrictions, Easements, Agreements, and Covenants* (hereafter *Agreement*) document.

Architecture

The proposed architectural style for the restaurant is a modern design that features a "downtown storefront" look with expansive windows, use of considerable classic brick elements, and painted wall signs to achieve the objectives of the NMDSP "downtown" design standards. Other exterior materials include stucco (EFIS), brick, and vertical fiberglass panels, in a palette of taupe, gray, brown, and green colors. An aluminum "knot wood" patterned cladding system in white ash will also be added as a horizontal detail on the building. Outdoor patio areas are proposed on both the south and east elevations with the south elevation incorporating an open trellis design to "shelter" the patio area that includes a mix of tables, seats, and benches. The final details of the furniture placement is included as a condition of approval and must meet the satisfaction of the Building Official's requirements for table separation and path of travel standards.

A sign program proposal is a part of the application project. The proposal includes painted logos on the north and west elevations of the building, advertising sign panels on the east wall, and several directory signs. Proposed building-mounted signs are shown on the building elevations for reference.

Landscaping/Hardscape

The applicant has prepared landscape and irrigation plans for the project. The selection and distribution of plant materials is designed to complement the architecture of the building and the existing shopping center landscaping. As identified on the plans, several mature trees will be retained, and additional Sycamore trees will be added. A large tree close to the existing building that is raising the adjacent sidewalk will be removed.

Copies of the site plan, floor plans, elevations, sign plans, and conceptual landscape plan are included in the City Council agenda packets.

PLANNING DIVISION COMMENTS

Overall, staff finds the project well designed, visually attractive, and consistent with the intent and design goals of the NMDSP. If approved, and the site is developed accordingly, the project would result in an immediate and significant improvement and ambiance of Moreno Street as envisioned by the NMDSP. Moreover, the project will be the first complete commercial development within the NMDSP and is strategically located

to complement the existing and future development anticipated by the Montclair Place District Specific Plan (MPDSP), directly across Moreno Street.

Lot Line Adjustment

Staff finds the Lot Line Adjustment (LLA) proposal to be a logical and appropriate method for supporting the proposed development of the site. The current Island's Restaurant pad and size could not accommodate a drive-thru lane that met the development standards of the NMDSP or the preferences of the Target Corporation concerning impacts to the center by the drive-thru lane. Because of these limitations, the applicant was challenged in creating a site plan that met the NMDSP design requirements.

Moreover, the NMDSP required the main entry door to face, and be accessible from, Moreno Street, and that the drive-thru lane did not wrap around all four sides of the building and/or be adjacent to the main street frontage. Panera Bread produced many design iterations for the current Island's Restaurant site, but could not meet the NMDSP requirements without shifting the restaurant to the west. It was at that time that the property owner began a conversation with Target Corporation to consider "swapping" the land via an LLA to accommodate the new Panera Bread Café site.

The proposed drive-thru configuration will now provide good queuing of the vehicles in the drive-thru lane and allow for appropriate internal pedestrian and vehicular circulation on the site with little to no adverse impact to the surrounding parking fields in the center. The proposed plan is designed so that the drive-thru lane will not be the prominent feature of the restaurant in accordance with the design goals and spirit of the NMDSP. Staff believes the applicant succeeded and exceeded staff's expectations with their creativity and commitment in achieving a site plan in full compliance with the strict design standards of the NMDSP.

Staff finds the size of the new lot to be adequate in size and dimension and supports the site plan and proposed LLA. All affected property owners agree with the proposal and are finalizing an amendment to the existing *Agreement* to address reciprocal access and parking for the site. Receipt of an executed copy of the amended *Agreement* is a condition of approval prior to the issuance of a building permit.

Finally, according to the NMDSP, parking for the restaurant is calculated at one space per 200 square feet of building area. Therefore, at 3,950 square feet, 20 parking spaces are required for the new restaurant. A total of 53 spaces will be provided under the amended REA.

Conditional Use Permit

As stated earlier in the report, a great amount of effort went into the design of the drive-thru lane for the proposed restaurant. Staff believes the design of the drive-thru lane and onsite circulation meets the development standards of the NMDSP. It should be noted, that the Coronavirus-19 (COVID-19) pandemic created several operational challenges for restaurant uses including the need for noncontact delivery of food to customers. Some changes have proven to be popular with the community and are incorporated into this design such as the drive-thru lane, outdoor dining opportunities, and specific parking spaces reserved for curbside and/or "rapid pick-up" delivery.

Outdoor dining is strongly encouraged in the NMDSP Plan Area, so the proposed outdoor seating area for Panera Bread Café is consistent with the Specific Plan. The restaurant's outdoor patio area is the first introduction of street-adjacent open-air dining on the block. The outdoor patio areas will kick off the first "downtown" element on Moreno Street as envisioned through the Plan.

Precise Plan of Design

Staff worked closely with the applicant's architect and the City's architectural design consultant to ensure the project was developed following the development standards and guidelines of the NMDSP. The resultant project architecture is relatively simple in form and utilizes an appropriate range of architectural details and durable materials. Architectural design and details are generally extended to all sides of the building. Staff believes the project architecture and colors selected for the project will help provide a comfortable level of distinction from the adjacent developments. Although the outdoor dining area is modest in size, it will be the first project on Moreno Street to set the stage for further improvements intended to create new street activity and ambiance for the area.

The proposed "wood-like" white ash elements and the large wooden entry doors add warmth to the building design as it stylishly complements the cool silver found on the window mullions and dark bronze awning features. The painted logo wall signs will add significant visual interest and design impact to what would otherwise be a plain wall expanse. The brick stack bond pattern and the metal details all add to an attractive and vibrant building design.

Landscaping and Sign Program

Regarding the proposed landscape plan and sign program, staff finds them both to be generally appropriate for the project. Conceptually, the proposed landscaping plan, including hardscape elements, is appropriate for the proposed architecture and size of the property. In addition, staff finds the proposed painted wall sign design to be attractive and consistent with the design standards found in the NMDSP. However, staff is recommending the applicant continue to work with staff on a small number of modifications and refinements to these project elements. Some of the items include modifications to plant and hardscape material selections, and adjustments to the number and type of signs that are proposed. Staff is confident these small details can be easily resolved. The recommended change to the time frame in Condition No. 4 of Resolution No. 21-3329 will provide the applicant additional time to ensure the above items are appropriately addressed prior to issuance of a grading and/or building permit.

Public Comment from Adjoining Property Owners

The item was advertised as a public hearing in the Inland Valley Daily Bulletin newspaper on December 10, 2021. Public hearing notices were mailed to property owners, and as a courtesy, to retail tenants, within a 300-foot radius from the boundaries of the subject property in accordance with State law for consideration of this discretionary zoning entitlement. At the time the report was prepared, no comments or inquiries regarding this proposal were received by staff.

Conditional Use Permit Findings for Drive-thru Service and Outdoor Seating

Staff believes the required findings for granting a CUP to allow a drive-thru lane and outdoor seating for the Panera Bread Café restaurant can be made as follows:

- A. That said use is essential or desirable to the public convenience and public welfare, in that the use will provide customers the convenience of dining outdoors or purchasing food and drink items without leaving their vehicle. Furthermore, the North Montclair Downtown Specific Plan encourages outdoor dining in the Plan Area to activate a lively and walkable neighborhood. Outdoor seating is conducive to attracting customers to food and drink businesses. When passersby observe the outdoor activity of people enjoying meals, drinks, and socializing, it

adds to the potential of attracting more customers, especially if the outdoor areas are well designed and inviting such as this project. The site design encourages walk-up customers under the North Montclair Downtown Specific Plan by appropriately separating the outdoor dining area and entry walkways from the drive-thru lane.

- B. That granting the permit will not be materially detrimental to the public welfare and other property in the vicinity, in that the drive-thru lane for the restaurant is designed to minimize on- and off-site traffic conflicts, and the primary outdoor seating area will be separated from the drive-thru queuing lanes and speakers. A drive-thru lane for restaurant businesses has become a desirable and convenient feature when it can be adequately accommodated on a particular site. Given the tight constraints of the site, staff believes the proposed drive-thru lane is effectively separated from the entrances to minimize adverse traffic/circulation conflicts within the site, or to surrounding areas parking caused by vehicles waiting for service during peak business hours.
- C. That such use in such location conforms to good zoning practice, in that the North Montclair Downtown Specific Plan (NMDSP) –Town Center – zoning district allows drive-thru businesses and outdoor seating in conjunction with restaurants, subject to CUP approval at this location.
- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area to realize optimum benefits for the residents of the community.

Precise Plan of Design Findings

- A. The proposed 3,950 sq. ft. Panera Bread Café project is consistent with the “Planned Development” land use designation of the City General Plan and the Town Center (TC) zoning district of the NMDSP. The proposed site plan and building design contribute to the ongoing development of an attractive and continuous Moreno Street streetscape and will be poised to complement future residential and commercial development in the NMDSP and MPDSP planning areas.
- B. The site plan, building form, height, drive-thru service lane location, and primary outdoor patio dining areas will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP for Moreno Street.
- C. The proposed architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP, featuring high-quality exterior materials and finishes, and incorporates appropriate lighting and landscape materials to give the project a distinctive and pleasing appearance.

FISCAL IMPACT: City Council approval of the entitlement application will have no direct fiscal impact to the General Fund, but could potentially become a catalyst for future development to the surrounding area thereby creating additional revenue for the City.

RECOMMENDATION: Staff recommends City Council adoption of Resolution No. 21-3329 making findings pursuant to CEQA and approving a CUP and PPD to allow the establishment of a 3,950 sq. ft. sit-down restaurant with drive-thru service and outdoor dining (Panera Bread Café) within the boundaries of the NMDSP located at 9052 Central Avenue and 5220 Moreno Street.

EXHIBIT A

RESOLUTION NUMBER 21-1956

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MONTCLAIR RECOMMENDING CITY COUNCIL APPROVAL OF A CONDITIONAL USE PERMIT AND PRECISE PLAN OF DESIGN UNDER CASE NO. 2021-32, TO ALLOW THE ESTABLISHMENT OF A 3,950-SQUARE-FOOT FULL-SERVICE RESTAURANT WITH DRIVE-THRU SERVICE AND OUTDOOR DINING IN AN EXISTING SHOPPING CENTER WITHIN THE BOUNDARIES OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN LOCATED AT 9052 CENTRAL AVENUE AND 5220 MORENO STREET (APNs 1008-151-02 AND 1008-151-03)

A. Recitals.

WHEREAS, on October 4, 2021, 5060 Montclair Plaza Lane Holdings Venture, LLC, and Target Corporation, property owners, filed an application for a Conditional Use Permit (CUP) and Precise Plan of Design (PPD) requesting approval to construct a new 3,950 sq. ft. full-service sit-down restaurant with drive-thru service and outdoor patio dining on a 12,000 sq. ft. parcel in the Target Shopping Center; and

WHEREAS, the applications apply to two properties at 9052 Central Avenue and 5220 Moreno Street both of which are located in the "Town Center (TC) - Transitional Overlay (TO)" zoning district of the North Montclair Downtown Specific Plan (NMDSP); and

WHEREAS, the property at 9052 Central Avenue is owned by the Target Corporation and is fully developed with a Target store and parking fields; and

WHEREAS, the property at 5220 Moreno Street is owned by 5060 Montclair Plaza Lane Holdings Venture, LLC, and is currently developed with a restaurant building (former Island's Restaurant) which closed in 2010; and

WHEREAS, the new restaurant site proposed with this project is to be carved out of a portion of the existing Target Shopping Center parking lot located directly west of the former Island's Restaurant site at 5220 Moreno Street; and

WHEREAS, a Lot Line Adjustment (LLA) application was filed to create a new 12,000 sq. ft. parcel to accommodate the proposed development of a new full-service restaurant (Panera Bread Café); and

WHEREAS, it is the intent of the two property owners/applicants to exchange the location of equal-sized land areas via an approved and recorded LLA and thereby

creating a new site for the proposed restaurant on a portion of the parking field owned by Target Corporation while eliminating an existing parcel which is currently developed with a former restaurant use; and

WHEREAS, upon City Council approval and recordation of the LLA and after property transactions are complete, 5060 Montclair Place Holdings Venture, LLC will no longer retain an interest in any real property in the Target Shopping Center.

WHEREAS, neither of the current property owners of the affected lots will develop the restaurant; and

WHEREAS, the final restaurant site would be developed by the new property owner in conjunction with Panera Bread. The new owner will, in turn, lease the site to Panera Bread.

WHEREAS, the NMDSP was amended by the Montclair City Council on March 20, 2017, to allow a drive-thru restaurant with or without outdoor dining at this general location, subject to review and approval of a Conditional Use Permit; and

WHEREAS, the NMDSP encourages outdoor dining opportunities in the Plan Area particularly along main corridors such as Moreno Street; and

WHEREAS, staff has determined the proposed restaurant with drive-thru service and outdoor dining meets the intent and requirements of the applicable development standards of the Town Center (TC) – Transitional Overlay (TO) zoning district of the NMDSP; and

WHEREAS, the Planning Commission finds the requested entitlements to be consistent with the adopted General Plan, NMDSP, and good planning principles; and

WHEREAS, the Planning Commission based on its own independent judgment, concurs with staff's determination that the proposed project qualifies for the exemption described in Section 15182 of the State CEQA Guidelines, which states that when a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or negative declaration need be prepared for a project undertaken under and in conformity to that specific plan if the project meets the requirements of section 15182. The EIR and subsequent EIR Supplement for the North Montclair Downtown Specific Plan (NMDSP) were prepared in 2006 and 2017, respectively in which the potential environmental impacts of the proposed restaurant project with drive-thru service were evaluated in the EIR. There are no changes to the significant and unavoidable impacts disclosed in the EIR. In sum, the project would not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. As such, none of the conditions listed in Section 15162 of the CEQA Guidelines requiring the preparation of a subsequent or supplemental EIR are present and the second criterion

of State CEQA Guidelines section 15182 can be satisfied. The proposed restaurant with drive-thru service will replace a similar use in essentially the same location as the existing use with no new significant impact than already present and anticipated in the EIR. Therefore, the proposed project qualifies for the exemption for projects described in Section 15182 of the state CEQA; and

WHEREAS, a notice of public hearing was duly given and posted in the manner and for the time frame prescribed by law; and

WHEREAS, on November 22, 2021, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the Planning Commission conducted a meeting at which time all persons wishing to testify in connection with the said project were heard and said proposal was fully studied.

B. Resolution.

NOW, THEREFORE, it is hereby found, determined, and resolved by the Planning Commission of the City of Montclair as follows:

1. This Commission hereby specifically finds that all of the facts set forth in the Recitals, Part A, of this Resolution are true and correct.
2. Based upon substantial evidence presented to this Commission during the above-referenced public hearing on November 22, 2021, including written and oral staff reports, together with public testimony, this Commission hereby finds as follows:

Conditional Use Permit Findings for Drive-thru Service and Outdoor Seating

- A. The use is essential or desirable to the public convenience and public welfare, in that the use will provide customers the convenience of dining outdoors or purchasing food and drink items without leaving their vehicle. Furthermore, the North Montclair Downtown Specific Plan encourages outdoor dining in the Plan Area to activate a lively and walkable neighborhood. Outdoor seating is conducive to attracting customers to food and drink businesses. When passersby observe the outdoor activity of people enjoying meals, drinks, and socializing, it adds to the potential of attracting more customers, especially if the outdoor areas are well designed and inviting such as this project. The site design encourages walk-up customers under the North Montclair Downtown Specific Plan by appropriately separating the outdoor dining area and entry walkways from the drive-thru lane.
- B. The granting of the permit will not be materially detrimental to the public welfare and other property in the vicinity, in that the drive-thru lane for the restaurant is designed to minimize on- and off-site traffic conflicts and the

primary outdoor seating area will be separated from the drive-thru queuing lanes and speakers. A drive-thru lane for restaurant businesses has become a desirable and convenient feature when it can be adequately accommodated on a particular site. Given the tight constraints of the site, staff believes the proposed drive-thru lane is effectively separated from the entrances to minimize adverse traffic/circulation conflicts within the site or to surrounding areas parking caused by vehicles waiting for service during peak business hours.

- C. That such use in such location conforms to good zoning practice, in that the North Montclair Downtown Specific Plan (NMDSP) -Town Center - zoning district allows drive-thru businesses and outdoor seating in conjunction with restaurants, subject to CUP approval at this location.
- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area to realize optimum benefits for the residents of the community.

Precise Plan of Design Findings

- A. The proposed 3,950-square-foot Panera Bread Café project is consistent with the "Planned Development" land use designation of the City General Plan and the Town Center (TC) zoning district of the North Montclair Downtown Specific Plan. The proposed site plan and building design contribute to the ongoing development of an attractive and continuous Moreno Street streetscape and will be poised to complement future residential and commercial development in the NMDSP and MPDSP planning areas.
 - B. The site plan, building form, height, drive-thru service lane location, and primary outdoor patio dining areas will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP for Moreno Street.
 - C. The proposed architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP, and features high-quality exterior materials and finishes, and incorporates appropriate lighting and landscape materials to give the project a distinctive and pleasing appearance.
3. Based upon the substantial evidence presented to this Commission during the above-referenced hearing on November 22, 2021, including written and oral staff

reports together with public testimony, this Commission hereby finds the proposed restaurant use with drive-thru service, to be consistent with the overall objectives of the City of Montclair General Plan, the North Montclair Downtown Specific Plan, the Montclair Municipal Code, and good planning principles, and recommends City Council approval of the application subject to every condition set forth below.

Planning Division

1. This approval is for the following entitlements per approved plans on file with the Planning Division and dated October 6, 2021, for the new parcel at 5212:
 - a. A Conditional Use Permit (CUP) to allow:
 - i. Drive-thru service and drive-thru lane for the new 3,950 square foot restaurant; and
 - ii. Outdoor dining areas with approximately 35 seats located on the south and east sides of the restaurant building.
 - b. A Precise Plan of Design for the proposed site plan, building design, landscape plans, and signage.
2. Minor modifications to this approval, which are determined to be in substantial conformance with the approved site plan, building elevations, landscaping, exterior lighting, and signage, which do not intensify or change the use or require any deviations from adopted standards, may be approved by the Director of Community Development upon submittal of prepared plans submitted for review and approval. Any modification, intensification, or expansion of the use and design plan deemed by the Director to be beyond that which is specifically approved with this PPD and CUP shall require review and approval by the City Council.
3. The above entitlements shall only be valid upon the effective date of City Council approval of the Lot Line Adjustment application associated with this project.
4. Prior to final review and determination on the proposed project by the City Council, the applicants and/or project developer shall complete the following items:
 - a. Provide black concrete used for the entire length of each drive-through lane, and the floor and adjacent apron of the proposed trash enclosure.

- b. Show all automobile parking spaces with double-line (e.g. "hairpin") striping. Parking stalls shall be a minimum of 9'-0" in width as measured to the center of the "hairpin," and a minimum of 20'-0" in length.
- c. Work with City staff to refine landscape plan and sign program to be consistent with the standards of the NMDSP.
- d. Provide catalog cuts for proposed exterior tables and chairs, umbrellas, trash receptacles, etc., for City review and approval. All patio furniture and umbrellas shall be made of high-quality, durable materials. No plastic furniture shall be allowed.
- e. An exterior lighting and photometric plan for the entire site. The plans shall indicate the location of all exterior light fixtures (area, building, parking lot, etc.) and the overall illumination levels across the site. All proposed exterior lighting shall comply with the following standards:
 - i. Provide a minimum maintained illumination level of one (1) foot-candle across the site.
 - ii. All parking lot and other freestanding light fixtures shall incorporate 90-degree cut-off style luminaires and flat lenses to direct illumination down to the surface to be illuminated and away from public rights-of-way surrounding the subject site.
 - iii. The use of roof-mounted light fixtures wall packs, barnlighters, or other similar unshielded luminaires on the property shall be prohibited.
 - iv. Maximum total height for freestanding light fixtures shall be limited to 20 feet, inclusive of the height for concrete bases.
 - v. Above-grade concrete bases for lights, menu boards, speakers, vertical clearance bars, etc., shall be finished with colored stucco matching the primary color and finish of stucco on the buildings.
 - vi. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design that complements the architecture of the building.

- f. Submit details for trash enclosure(s).
 - i. Each trash enclosure shall have a solid roof cover and be designed to complement the overall architecture of the main building.
 - ii. Contact Burrtec Waste Industries to determine the number of required bins and pick-up schedules to support the most likely end-user(s) of the building.
 - g. A plan to improve the appearance of the existing bus stop structure including new paint, landscaping, and other related improvements.
5. Prior to the issuance of a grading and/or building permit, the applicant shall submit a duly recorded copy of the Fourth Amendment to the Real Estate Agreement between the affected parties in the Target Shopping Center including the new site and use regarding reciprocal access and parking. Please note, no grading and or building permits shall be issued for the project without this document.
 6. Upon City approval and recordation of the Lot Line Adjustment with the County of San Bernardino Recorder's Office, all previous entitlements associated with 5220 Moreno Street that parcel, including prior CUP approval for alcohol sales, shall be revoked and considered null and void.
 7. CUP approval shall be valid for six months (180 calendar days) from the date of City Council approval and shall automatically expire on the six-month anniversary date of City Council action unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days before the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.
 8. This PPD approval shall be valid for one year from the date of City Council approval and shall automatically expire on the one-year anniversary date of City Council action unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days before the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.

9. In establishing and conducting the subject use, the applicant shall at all times comply with all laws, ordinances, and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this CUP and PPD shall not waive compliance with any such requirements.
10. Upon transfer, sale, or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees, or assignees.
11. The applicant and the property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 15 days of receipt of the City Council Resolution approving the project.
12. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
13. Within five (5) days of approval by the City Council, the applicant shall submit the following payments to the Planning Division:
 - a. A check for **\$50.00**, payable to the "Clerk of the Board of Supervisors," to cover the fee for filing a Notice of Exemption for the project as required by the California Environmental Quality Act (CEQA).
 - b. A check for **\$494.36** made payable to the "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law.
14. Restaurant hours shall be limited to 6:00 a.m. through 10:00 p.m. seven days a week. The applicant may close the restaurant earlier than the hours stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and is subject to City approval.
15. The sale or service of alcoholic beverages from the restaurant or upon the premises shall not be permitted without City review and approval, and appropriate licensing by the State Alcoholic Beverage Control Board (ABC).
16. The new use shall comply with the following operational standards:
 - a. No outdoor display areas for merchandise are allowed at any time.

- b. No exterior public telephones, vending machines, children's rides, or other coin-operated machines shall be located on the site.
 - c. No outdoor storage, including shelving, boxes, supplies, etc.
 - d. On-site electronic arcade and amusement games shall be prohibited.
17. The use of cabinets or receptacles to collect used dishware, serving dishes and utensils, cups, etc., shall be limited in scope and designed to be screened from view and complement, not detract, from the appearance of the outdoor dining areas. The placement, size, and design of such receptacles are subject to Director review and approval.
18. The applicant and/or property owner shall ensure that a copy of the final City Council Resolution including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.
19. Prior to the commencement of business activities, the business owner shall apply for and obtain a City of Montclair Business License, and shall maintain a valid City business license at all times. Should such licensing be denied, expire or lapse at any time in the future, this permit shall become considered a violation of this condition and the use shall be subject to revocation proceedings.
20. The pick-up window associated with the drive-thru lane shall be covered by a solid roof or canopy structure integral and complementary to the architecture of the building to which it is attached, to the satisfaction of the Director of Community Development.
21. Speakers at the drive-thru ordering position shall comply with the City's Noise Ordinance (Chapter 6.12 of the Montclair Municipal Code) at all times and shall be subject to periodic inspection by the City. Violation of this condition shall be grounds for modification of the hours of operation of the drive-thru, closing of the drive-thru until compliance can be achieved, or revocation of the Conditional Use Permit.
22. The drive-thru lane shall be constructed of black concrete for the entire length of the lane. The condition of the drive-thru lane shall be maintained in a clean and sound condition at all times.
23. The following mandatory conditions are hereby imposed as part of the CUP approval:

- a. The premises shall be maintained at all times in a neat and orderly manner. The timely removal of trash, used dishes/cups, carts, etc., and the regular sanitizing of tables and chairs in outdoor dining areas and surrounding areas (including parking field) shall be performed regularly to ensure a clean, orderly, and appearance of the facility to the street.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Director of Community Development.
 - c. All patio furniture shall be properly maintained with any damaged items being promptly repaired or replaced within 72 hours.
 - d. No alcoholic beverages shall be served and/or consumed anywhere on the subject premises.
 - e. The on-site manager shall take whatever steps are deemed necessary to assure the orderly conduct of employees, patrons, and visitors on the premises.
24. Prior to the issuance of building permits for the project, the property owner or applicant shall provide plans submitted for Building Division Plan Check the following items to the satisfaction of the Director of Community Development:
- a. Catalog cuts for proposed exterior tables and chairs, umbrellas, trash receptacles, dish collections cabinets, etc., for Director of Community Development review and approval. All patio furniture and umbrellas shall be made of high-quality, durable materials. No plastic furniture shall be allowed.
 - i. Catalog cutouts for all building-mounted light fixtures for Director of Community Development approval.
 - i. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design that complements the architecture of the building. Freestanding parking lot luminaires shall match the style and color of freestanding light fixtures utilized for the adjacent parking lot.
 - ii. No roof-mounted light fixtures shall be allowed.
 - iii. The use of wall packs, barnlighters, or other similar unshielded luminaires on the property shall be prohibited.

- iv. Soffit lights on the exterior of the building, including under drive-thru canopies, shall be flush-mounted with the surface to which they are attached.
25. No exterior security bars and roll-up doors shall be installed on windows and pedestrian building entrances.
26. All landscaping disturbed during construction shall be replanted subject to the approval of the Director of Community Development.
27. No outdoor storage of used fats, oils, or grease (FOG) shall be allowed within or outside of the trash enclosure. Applicants are advised to utilize an internal collection system and contract with a certified company duly licensed for waste removal.
28. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
29. All rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the Director of Community Development.
30. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner per the provisions of Chapter 11.46 of the Montclair Municipal Code.
31. Mechanical equipment including, but not limited to, utility meters, air conditioners, kitchen vents or hoods, repair equipment, etc., shall be located within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the City Planner. Wooden lattice or fence-like screens/covers are not appropriate within the context of commercial development and are therefore not allowed.
32. No surface-mounted exposed conduit or electrical lines shall be allowed. Electrical switchgear, meters, etc. must be screened or housed in an enclosure, to the extent allowed by the utilities.
33. No live entertainment activities are included with this approval. It shall be the responsibility of the business owner to apply for an Entertainment Permit according to the Montclair Municipal Code. Entertainment Permits shall be reviewed and approved by the Montclair Police Department.
34. Prior to the installation of any signs, the applicant shall apply (s) for City review and approval of a required Sign Permit and applicable building

permits. All signs shall be consistent with the sign program approved for the project.

35. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners to announce the grand opening or advertising promotions shall require a banner permit from the Planning Division before installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
36. All signs shall be maintained at all times, in good appearance and operating condition. Exposed surfaces shall be cleaned regularly and painted as necessary. Broken and defective parts shall be immediately repaired or replaced.
37. A copy of the CUP approval letter and resolution with all conditions of approval related to the application shall be conspicuously posted alongside the establishment's Business License and Certificate of Occupancy and shall be made available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.
38. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
39. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the

voters of City), for or concerning the project, whether such actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Building Division

40. Submit four complete sets of plans including the following:
 - a. Site/Plot Plan;
 - b. Floor Plan;
 - c. Reflected Ceiling Plan
 - d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
 - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
 - f. Provide an existing plan of the building including all walls to be demolished.
 - g. Waste recycling plan, recycling 65% of all construction debris
41. The applicant shall comply with the latest adopted California Building Code, and other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of the submitted plans.
42. A building, structure, sewage system, utility line, eave or projection of a structure, or similar shall not cross over a property line to encroach on another property. A project site consisting of more than one property shall be merged into a single property by way of an approved and recorded lot merger or lot line adjustment before the beginning of improvements to the site.
43. Submit two sets of structural calculations and two sets of energy conservation calculations.
44. Architect's/Engineer's stamp and "wet" signature are required before plan check approval.

45. The address for this location will be 5212 Moreno Street. Please refer to this new address on all plans submitted for plan check and subsequent building permit applications. The number will be temporary until the Lot Line Adjustment is recorded with the County of San Bernardino. When proof of recordation for the LLA is received by the Building Official, notifications will be sent by the Building Official to all appropriate agencies and utilities as an official notification of the permanent address.
46. Indicate on submitted plans disabled-accessible path(s) by way of directional arrow, from the public entrance to the building to the public right-of-way from the affected area of new construction or renovation. All required disabled-accessible parking lot signs, sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%).
47. Exposed raceways shall be prohibited on all building-mounted and freestanding signs. An architectural sign backing/raceway may be considered for approval by the Director of Community Development as part of a sign for a commercial building.
48. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.
49. Decorative foam trim shall not be used in areas subject to damage such as entry doors, low windows, wall corners, etc.
50. All mechanical devices and their parts, such as air conditioners, evaporative coolers, exhaust fans, vents, transformers, or similar equipment, whether located on the ground or the roof of the structure, shall be concealed on all sides from public view in a manner that is compatible with the architectural design of the building and to the satisfaction of the Planning Division.
51. All roof-mounted equipment and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.
52. Fire sprinkler risers and roof access ladders shall be located entirely within the enclosed buildings. Double-detector check facility shall be adequately screened by landscaping or an architectural screen wall.

53. All trash enclosures shall be constructed of material consistent with the primary type and color that is used on the building. The construction of such trash enclosure(s) shall conform to City standards and shall have a solid roof complementary to the main building. Black-colored concrete shall be used for the trash enclosure floor and its apron.
54. Construction drawings submitted to the Building Division for plan check review shall comply with Montclair Security Ordinance No. 357, including, but not limited to, adherence to the following standards:
 - a. The numerical address of the building shall be displayed in a maximum of two locations as follows:
 - i. Numerals shall be in a font acceptable to the Planning Division, minimum 10 inches in height, minimum 1½ inches in depth, and
 - ii. In a color that adequately contrasts with the background surface to which they are attached.
 - b. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.
55. No soil shall be imported or exported to or from the project site from an adjacent building site or other sources for construction purposes without first obtaining approval from the City Engineer. A plan satisfactory to the City Engineer shall be prepared to show the proposed haul route within the City. The subject plan shall include provisions for street sweeping and cleanup. Applicant/contractor shall comply with all NPDES requirements.
56. Underground Service Alert shall be notified 48 hours before any excavation at (800) 422-4133.
57. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
58. The applicant/developer shall install approved emergency lighting to provide adequate illumination automatically in the event of any interruption of electrical service.
59. The patio is not depicted on the floor plan. Table placement for the patio is required to be shown for accurate accessible widths access.

60. A Certificate of Occupancy is required before occupancy of the subject building. Issuance of a Certificate of Occupancy by the Building Official shall be contingent upon Fire Department inspection and approval of all conditions.
61. Before issuance of a Certificate of Occupancy, the person or corporation responsible for the preparation of the Water Quality Management Plan shall certify, in writing, to the Building Official that all conditions and requirements of the Water Quality Management Plan have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, the developer shall also submit evidence to the Building Official that the lessee or purchaser has been advised in writing of the lessee's or purchaser's ongoing maintenance responsibilities for the requirements of the Water Quality Management Plan.
62. Before the issuance of the Certificate of Occupancy, a Final Grade Certificate shall be provided to the Building Official issued from the Registered Civil Engineer of Record that all on-site improvements have been constructed per all City Standards, Specifications, Conditions of Approval, and approved plans.
63. Temporary construction and storage trailers placed on the property shall first obtain approval from the Planning and Building Divisions. If any trailers will include uses for public access, handicap accessibility requirements shall apply. Before any trailer is set in its location, obtain all permits from the building division. Plans and structural calculations will be required for the tie-down devices. Trailers used for public use (and not used for construction only) are required to be handicapped accessible. The trailer will require access to the facility by way of ramps that comply with the California Building Code (CBC) 2019 edition, Chapter 11B, in addition to access to each feature of the trailer.

Engineering

64. All streets public and private shall have sidewalks conforming to the Americans with Disabilities Act. Widths and scoring patterns shall conform to City Standard 114.
65. The permanent pavement restoration limits on Moreno Street will be from the west property line spanning the Development frontage to the signalized entrance to the site, from the north curb to the median island curb. The overlay in the roadway will capture all street cuts for all wet and dry underground utilities. For any street cuts for utilities that go beyond the west and or east property line, those areas will be included in the overall permanent pavement restorations limits. Should any street cuts extend

past the median island to eastbound lanes, the permanent pavement restoration limits for the eastbound lanes will be the same as for the westbound lanes.

66. All work in the Right of Way must have a Construction and Street/Lane Closure Permit issued by the City of Montclair, Engineering Division.
67. All construction methods and practices shall be done per the City of Montclair Standards and General Permit Conditions.
68. All pavement damaged by excavation will be replaced with permanent pavement per City Standard 301 for paving and trench repair.
69. Replace all existing lifted or cracked curb gutter, damaged utility pull box lids, and the sidewalk adjacent to the property. Additionally remove a sidewalk that shows signs of ponding or is pitting, scaling, or spalling. Curb Ramps at Target Lane are not in compliance with ADA guidelines. See City Standard 116 for Wheelchair Ramps.
70. Install a new sidewalk along the west side of Target Lane from the northwest corner of Moreno Street at the existing curb ramp to the end of the parking area.
71. Restore striping legends on Target Lane.
72. All Utilities in the public right-of-way portion of each street frontage adjacent to the site shall be placed underground. This requirement applies to electrical services (facilities operated at nominal voltages in excess of 20,000 volts not included), and switches, and where technology exists, telephone and cable television facilities as well.
73. All utilities within development boundaries shall be placed underground. This requirement applies to electrical services, transformers and switches, telephone, communications, and cable television facilities as well.
74. Approval of the WQMP is required before the preparation of the precise grading plan and/or other improvement plans.
75. A precise grading plan shall be prepared subject to the approval of the City Engineer. An erosion control plan is to be included and considered an integral part of the precise grading plan. Grading plans shall be designed per City standards and guidelines, and shall be on 24" by 36" sheets.

76. Prepare and submit to the satisfaction of the City Engineer a preliminary soils report addressing site geology, site stability, grading requirements, over-excavation requirements, and other pertinent soil information.
77. All drainage facilities shall comply with the requirements of the approved WQMP.
78. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
79. Prepare and submit to the satisfaction of the City Engineer a comprehensive grading and drainage plan prepared by a Registered Civil Engineer in conformance with Chapter 70 of the Uniform Building Code. Before the commencement of any demolition, clearing and grubbing, and/or grading, a grading permit shall be obtained from the Building Division. Plan approval is required before the issuance of a grading permit by the Engineering Division.
80. Prepare and submit to the satisfaction of the City Engineer plans for erosion control and stormwater pollution prevention. The erosion control plan shall be an integral part of the grading plans. Plan approval is required before the issuance of a grading permit by the Engineering Division. A general construction stormwater permit may be required. Please contact Steve Stanton at 909-625-9441 for details.
81. No soil shall be imported to or exported from the site without first obtaining approval from the City Engineer. Prepare and submit to the satisfaction of the City Engineer a plan showing proposed haul routes. Plans shall include provisions for street sweeping and cleanup. Plan approval is required before the issuance of a grading permit by the Engineer Division.
82. Prepare and submit to the satisfaction of the City Engineer a letter of non-interference from any utility company that may have rights or easement within the property boundaries.
83. Where street construction, surfacing, or resurfacing is required, all utility work within the frontage of the site shall be completed before the street is capped.
84. Payment of transportation-related development impact fees. Fees shall be assessed at the rate in effect at the time the fees are paid.
85. Underground Service Alert (800-422-4133) shall be notified 48 hours before any excavation at the site.

86. All off-site and on-site trenching and excavation shall conform to Cal-OSHA standards. Excavations that exceed five feet in depth require a Cal-OSHA permit.
87. All existing overhead utilities shall be placed underground and poles removed.
88. The developer shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code.
89. The lot line adjustment may be submitted for plan checking before, in conjunction with, or after the submittal of the public improvement plans. Lot Line Adjustments submittals shall include a preliminary title report, reference deeds, closure calculations, reference maps, and other reference material as may be necessary to check the lot line adjustment map. An advance plan check fee, the amount to be determined by the City Engineer, shall be required at the time map is submitted.
90. Street, sewer, and storm drain plans shall be prepared in a format acceptable to the City Engineer and shall be submitted to the City Engineer's office for approval. An advance plan check fee, the amount to be determined by the City Engineer shall be required at the time plans are submitted. Construction and acceptance of street improvements, as per the approved plans, shall be required to obtain a release for a Certificate of Occupancy from the Building Division.
91. A Public Works construction permit shall be obtained from the Engineering Division before any removals or construction of improvements in the public right-of-way.
92. Vehicular access is required to all sewer and storm drain manholes. Easements shall be further deed-restricted with respect to building to the satisfaction of the City Engineer.
93. Conduct a photometric study to determine compliance with minimum parking lot lighting requirements.

Environmental

94. Discharge of wastewater into the City of Montclair sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.
95. Regional Sewerage Supplemental Capital Outlay fees are required per Section 9.20.440 of the Montclair Municipal Code and the Inland Empire Utilities Agency (IEUA).

96. Connection to the City of Montclair Sanitary Sewer System is required. Additional comments may follow pending submittal of plans for plan check review.
97. A grease interceptor is required for this project, please complete the Waste Discharge Survey form and submit it for sizing requirements. Contact Engineering Division Manager, Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
98. A Sampling Station/Sample Wye is required to be installed at the last point of the non-domestic waste line before connection to the domestic waste line and final connection to the main sewer line. Please include the Sample Wye schematic on the plumbing plan.
99. The Sampling Station/Sample Wye must be located in a location that will not be obstructed by equipment or storage. The clean-out cover for the Sample Wye shall be accessible for inspection at all times.
100. Interior grease removal devices are not permitted by the County of San Bernardino and the City of Montclair.
101. Trash enclosures must be designed per the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial Organics Recycling as established by the California Department of Resources Recycling and Recovery (CalRecycle). Contact Engineering Division Manager, Steve Stanton at (909) 625-9444 for more information.
102. Documentation from Burrtec Waste Industries, Inc. (Burrtec) indicating that a service agreement has been set up with Burrtec that meets all Mandatory Commercial Recycling Requirements (AB 341) and Mandatory Organics Recycling Requirements (AB 1826) for waste hauling as established by the State of California and that the appropriate number of refuse/recycling dumpsters has been established, including meeting Montclair Municipal Code 6.16.025, Commercial recycling and organic waste recycling/diversion. Submit documentation to Engineering Division Manager, Steve Stanton (sstanton@cityofmontclair.org). Contact Steve Stanton at (909) 625-9444 for more information.
103. The WQMP must have preliminary approval from the Engineering Division before obtaining grading/building permit(s). Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
104. The property owner shall be responsible to contract with a qualified firm to inspect and maintain any stormwater treatment devices specified by the approved WQMP, following all WQMP recommendations. It shall also be the responsibility of the property owner to maintain inspection reports and

have them readily available for review by City staff upon request. If any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the property owner to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.

105. Prepare and submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and road installation, and vertical construction to the satisfaction of the City Engineer. Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
106. At the time of Grading permit issuance; Post-Construction BMP inspection permit fees associated with the approved WQMP shall be paid. Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for further information regarding permits and fees.
107. Before issuance of a Certificate of Occupancy, the applicant shall:
 - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.
 - b. Submit to the Engineering Division as-built drawings as it relates to the WQMP.
 - c. Record the WQMP Maintenance Agreement with the County of San Bernardino and provide evidence of said recording to the Engineering Division.
 - d. Provide a letter from the Engineer of Record that states all BMPs associated with the WQMP are constructed and functional per the City approved WQMP.
 - e. Provide Certification of Landscape Completion form, to be completed by the landscape architect of record.
108. Prior to the release of the certificate of occupancy for the building, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the Engineering Division Manager that all conditions and requirements of the WQMP have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, the developer shall also submit evidence to the Engineering Division Manager that the lessee or purchaser has been advised in writing of the lessee's or purchaser's ongoing maintenance responsibilities with respect to the requirements of the WQMP.

Landscape Conditions of Approval Associated with the WQMP

109. It is required before receiving the Certificate of Occupancy the Landscape Architect of record to comply and submit a Letter of Completion to both Planning Division and Engineering Division.
110. Property Owner/Lessee is required to employ a Bonded and California Licensed C-27 Landscape Contractor to conduct all landscaping on the property.
111. Landscape Contractor must have a City Business License to operate in the City of Montclair.
112. To ensure the landscaping associated with the stormwater treatment device(s) is maintained properly for the life of the project, the property owner/lessee must provide to the Engineering Department every third year after receiving the Certificate of Occupancy, a wet stamped letter of certification from a licensed, certified Landscape Architect, or recognized horticulturist organization or business.
113. The certified letter must state that the plants located within the boundaries of and immediately adjacent to stormwater treatment devices are currently in good health and have been maintained to continue to promote the long-term functional and aesthetic performance of the stormwater treatment device. For example, if the planted component of the stormwater device was designed to control erosion, aid in pollutant capture, or maintain permeability, the plant material must be kept at a level of health and vigor to continually meet these functional requirements.
114. Individuals qualified to submit the certification letter must be able to identify species present and report on their conditions. Providing the original planting design documents to the consulting horticulturist may help them in this process.
115. If mulch is present in the assessment area, this must be noted in the letter along with the current depth of the mulch layer and a description of which areas of the stormwater treatment device are mulched.
116. Five to ten clear and representative site photos showing the condition of the various plant materials located in and adjacent to the stormwater treatment device and any other notable conditions related to the device, printed in color on standard 8.5 x 11 paper, must also be submitted as part of the letter.

117. Representatives of the Engineering Department may follow up with site inspections to confirm the accuracy of certification letters and the overall functional condition of stormwater treatment devices.

Police Department

118. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, state, and Federal requirements placed upon them by any regulatory or governing entity.
119. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications, or revocation.
120. There shall be no special promotional events held on the property unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
121. If applicable, the parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
122. The premises shall install and maintain a closed-circuit video surveillance (CCVS) system. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner that allows for the widest view from the entrance, without significant lens distortion, and one camera per entrance/exit door. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. Cameras shall be capable of no less a resolution than 1920×1080 pixels, otherwise known as 1080p. All cameras shall have IR or low light capability.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for no less than 90 days. To conserve storage space, cameras may reduce frame-rate when no motion is detected, however must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area, if applicable. Motion sensors may be configured to prevent incidental activation from hanging or moving

displays. Depending on the nature of the premises, additional cameras may be required.

123. Alarm systems are encouraged to compliment the C CVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

Fire Department


124. Prior to the issuance of grading permits a fire department access plan shall be submitted to the City of Montclair for review and approval. The fire department access plan shall comply with the requirements specified by the City of Montclair Guideline for Fire Department Access & Water Requirements for Commercial & Residential Development, and the California Fire Code, Chapter 5.
125. Prior to the issuance of grading permits, evidence of sufficient fire flow of 1,500 GPM for 2 hours shall be provided to Montclair Fire Prevention.
126. A fire department access road complying with the CFC, Chapter 5, and the approved fire department access plans shall be installed before building construction.
127. The fire department access road shall be inspected by Montclair Fire Prevention Bureau before building construction.
128. The fire department access road shall remain unobstructed at all times.
129. A fire department connection (FDC) shall be provided and located within 50 feet of a public fire hydrant. The use of a private hydrant may be used with the use of an aboveground check valve to prevent the flow from the FDC back to the fire hydrant, and with the approval of the Montclair Fire Prevention Bureau.
130. All required fire hydrants shall be installed and operational before building construction. All fire hydrants shall remain operational during construction.
131. All required fire hydrants shall be readily visible and immediately accessible. A clear space of not less than 3-feet shall be maintained at all times.
132. Prior to construction a temporary address sign shall be posted and clearly visible from the street.

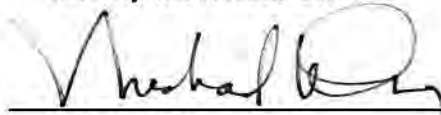
133. The permanent building address shall be provided and either internally or externally lighted during hours of darkness. The address shall be clearly visible from the street fronting the property and comply with California Fire Code Section 505.1 for size and color.
134. Montclair Fire Prevention Bureau approval shall be obtained prior to the storage and/or use of hazardous materials as defined by the California Fire Code.
135. The building shall be provided with an automatic fire sprinkler system in accordance with NFPA 13. Construction plans shall be submitted for review and approval to the City of Montclair prior to installation.
136. Prior to building final, the building shall be provided with a Knox Lock key box located no more than seven-feet above the finished surfaced and near the main entrance door.

The Secretary to this Commission shall certify to the adoption of this Resolution.

APPROVED AND ADOPTED THIS 22ND DAY OF NOVEMBER, 2021

PLANNING COMMISSION OF THE CITY OF MONTCLAIR, CALIFORNIA

By: 
 Manny Martinez, Chair

ATTEST: 
 Michael Diaz, Secretary

I, Michael Diaz, Secretary of the Planning Commission of the City of Montclair, do hereby certify that the foregoing Resolution was duly and regularly introduced, passed, and adopted by the Planning Commission of the City of Montclair, at a regular meeting of the Planning Commission conducted on the 22nd day of November 2021, by the following vote, to-wit:

AYES: Chair Martinez, Vice Chair Sanchez, Commissioner Eaton, Commissioner Patel, and Commissioner Sahagun

NOES: None

ABSENT: None

Z:\COMMDEV\CSC\CASES\2021-32 RESO

RESOLUTION NO. 21-3329

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR MAKING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND APPROVING A CONDITIONAL USE PERMIT AND PRECISE PLAN OF DESIGN TO ALLOW THE ESTABLISHMENT OF A 3,950 SQ. FT. SIT-DOWN RESTAURANT WITH DRIVE-THRU SERVICE AND OUTDOOR DINING WITHIN THE BOUNDARIES OF THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN LOCATED AT 9052 CENTRAL AVENUE AND 5220 MORENO STREET

WHEREAS, on October 4, 2021, 5060 Montclair Plaza Lane Holdings Venture, LLC, and Target Corporation, property owners, filed an application for a Conditional Use Permit (CUP) and Precise Plan of Design (PPD) requesting approval to construct a new 3,950 sq. ft. sit-down restaurant with drive-thru service and outdoor patio dining on a 12,000 sq. ft. parcel in the Target Shopping Center; and

WHEREAS, the applications apply to two properties at 9052 Central Avenue and 5220 Moreno Street both of which are located in the “Town Center (TC) - Transitional Overlay (TO)” zoning district of the North Montclair Downtown Specific Plan (NMDSP); and

WHEREAS, the property at 9052 Central Avenue is owned by the Target Corporation and is fully developed with a Target store and parking fields; and

WHEREAS, the property at 5220 Moreno Street is owned by 5060 Montclair Plaza Lane Holdings Venture, LLC, and is currently developed with a restaurant building (former Island’s Restaurant, which closed in 2010); and

WHEREAS, the new restaurant site proposed with this project is to be carved out of a portion of the existing Target Shopping Center parking lot located directly west of the former Island’s Restaurant site at 5220 Moreno Street; and

WHEREAS, a Lot Line Adjustment (LLA) application was filed to create a new 12,000 sq. ft. parcel to accommodate the proposed development of a new full-service restaurant (Panera Bread Café); and

WHEREAS, it is the intent of the two property owners/applicants to exchange the location of equal-sized land areas and thereby creating a new site for the proposed restaurant on a portion of the parking field owned by Target Corporation while eliminating an existing parcel which is currently developed with a former restaurant use presently and eliminate an existing parcel via an approved and recorded LLA; and

WHEREAS, upon City Council approval and recordation of the LLA and after property transactions are complete, 5060 Montclair Place Holdings Venture, LLC will no longer retain an interest in any real property in the Target Shopping Center; and

WHEREAS, neither of the current property owners of the affected lots will develop the restaurant; and

WHEREAS, the final restaurant site would be developed by the new property owner in conjunction with Panera Bread—the new owner will, in turn, lease the site to Panera Bread; and

WHEREAS, the North Montclair Downtown Specific Plan (NMDSP) was amended by the Montclair City Council on March 20, 2017, to allow a drive-thru restaurant with or without outdoor dining at this general location, subject to review and approval of a Conditional Use Permit; and

WHEREAS, the NMDSP encourages outdoor dining opportunities in the NMDSP particularly along main corridors such as Moreno Street; and

WHEREAS, staff has determined the proposed restaurant with drive-thru service and outdoor dining meets the intent and requirements of the applicable development standards of the Town Center (TC) - Transitional Overlay (TO) zoning district of the NMDSP; and

WHEREAS, the City Council’s Real Estate Committee previewed the project proposal; and

WHEREAS, on November 22, 2021, the Planning Commission of the City of Montclair ("Planning Commission") conducted a duly noticed public hearing on the said application at which time all persons wishing to testify in connection with the project were heard and said Conditional Use Permit and Precise Plan of Design for the proposed 3,950 sq. ft. sit-down restaurant with drive-thru service and outdoor dining was fully studied; and

WHEREAS, on November 22, 2021, the Planning Commission, by a vote of 5-0, recommended that the City Council approve Planning Case No. 2021-32, a Conditional Use Permit and Precise Plan of Design subject to the conditions of approval pursuant to Planning Commission Resolution No. 21-1956 prepared for the project; and

WHEREAS, staff is recommending the removal of Condition No. 70 of Planning Commission Resolution No. 21-1956, a condition to install a new sidewalk along the west side of Target Lane from the northwest corner of Moreno Street at the existing curb ramp to the end of the parking area; and

WHEREAS, staff is recommending retaining Condition No. 4 of Planning Commission Resolution No. 21-1956 with the modification requiring the requested items detailed therein be satisfied prior to the issuance of a grading and/or building permit; and

WHEREAS, on December 10, 2021, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall and on the City's website, and mailed to all property owners within 300 feet of the subject site; and

WHEREAS, on December 20, 2021, commencing at 7:00 p.m. in the Council Chambers at Montclair City Hall, the City Council conducted a duly noticed public hearing at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

WHEREAS, the NMDSP requires final City Council review and approval of all entitlements for projects within the boundary of the NMDSP; and

WHEREAS, the City Council finds the requested entitlements to be consistent with the adopted General Plan and the guidelines and development standards of the NMDSP and follows good planning principles; and

WHEREAS, based on the entire record before the City Council and all written and oral evidence presented, the City Council finds the proposed project complies with the California Environmental Quality Act (CEQA) for the reasons set forth in this Resolution; and

WHEREAS, the City Council, based on its own independent judgment, concurs with the Planning Commission's determination that the proposed project qualifies for the exemption described in Section 15182 of the state CEQA Guidelines, which states that when a public agency has prepared an EIR on a specific plan after January 1, 1980, no Environmental Impact Report (EIR) or Negative Declaration need be prepared for a project undertaken under and in conformity to that specific plan if the project meets the requirements of section 15182. The EIR and subsequent EIR Supplement for the North Montclair Downtown Specific Plan (NMDSP) were prepared in 2006 and 2017, respectively, in which the potential environmental impacts of the proposed restaurant project with drive-thru service were evaluated in the EIR. There are no changes to the significant and unavoidable impacts disclosed in the EIR. In sum, the project would not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and additional or different mitigation measures are not required to reduce the impacts of the project to a level of less-than-significant. As such, none of the conditions listed in Section 15162 of the CEQA Guidelines requiring the preparation of a subsequent or supplemental EIR are present and the second criterion of State CEQA Guidelines section 15182 can be satisfied. The proposed restaurant with drive-thru service will replace a similar use in essentially the same location as an existing use with no new significant impact than already present and anticipated in the EIR. Therefore, the proposed project qualifies for the exemption for projects described in Section 15182 of the state CEQA.

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

SECTION 1. Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that the proposed project is exempt from further environmental review pursuant to State CEQA Guidelines, Sections 15162 and 15182 based on the following findings of fact: the Planning Commission based on its own independent judgment, concurs with staff's determination that the proposed project qualifies for the exemption described in Section 15182 of the state CEQA Guidelines, which states that when a public agency has prepared an EIR on a specific plan after January 1, 1980, no EIR or Negative Declaration need be prepared for a project undertaken under and in conformity to that specific plan if the project meets the requirements of section 15182. The EIR and subsequent EIR Supplement for the NMDSP were prepared in 2006 and 2017, respectively in which the potential environmental impacts of the proposed restaurant project with drive-thru service were evaluated in the EIR. There are no changes to the significant and unavoidable impacts disclosed in the EIR. In sum, the project would not have one or more significant effects not discussed in the previously certified EIR, not have more severe effects than previously analyzed, and that additional or different mitigation measures are not required to reduce the impacts of the project to a level of less than significant. As such, none of the conditions listed in Section 15162 of the CEQA Guidelines requiring the preparation of a subsequent or supplemental EIR are present and the second criterion of State CEQA Guidelines section 15182 can be satisfied. The proposed restaurant with drive thru service will replace a similar use in essentially the same location as an existing use with no new significant impact than already present and anticipated in the EIR. Therefore, the proposed project qualifies for the exemption for projects described in Section 15182 of the state CEQA.

SECTION 2. Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings set forth in this Resolution, the City Council approves a Conditional Use Permit and a Precise Plan of Design under Case No. 2021-32 for construction of a 3,950 sq. ft. sit-down restaurant with drive-thru service and outdoor dining, subject to the conditions of approval set forth in this Resolution and as depicted in the submitted site plan, elevations, and renderings submitted to Planning staff dated October 6, 2021.

SECTION 3. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of Conditional Use Permit for the proposed restaurant with drive-thru service and outdoor dining under Case No. 2021-32:

- A. The use is essential or desirable to the public convenience and public welfare, in that the use will provide customers the convenience of dining outdoors or purchasing food and drink items without leaving their vehicle. Furthermore, the North Montclair Downtown Specific Plan encourages outdoor dining in the Plan Area to activate a lively and walkable neighborhood. Outdoor seating is conducive to attracting customers to food and drink businesses. When passersby observe the outdoor activity of people enjoying meals, drinks, and socializing, it adds to the potential of attracting more customers, especially if the outdoor areas are well designed and inviting such as this project. The site design encourages walk-up customers under the North Montclair Downtown Specific Plan by appropriately separating the outdoor dining area and entry walkways from the drive-thru lane.
- B. The granting the permit will not be materially detrimental to the public welfare and other property in the vicinity, in that the drive-thru lane for the restaurant is designed to minimize on- and off-site traffic conflicts, and the primary outdoor seating area will be separated from the drive-thru queuing lanes and speakers. A drive-thru lane for restaurant businesses has become a desirable and convenient feature when it can be adequately accommodated on a particular site. Given the tight constraints of the site, staff believes the proposed drive-thru lane is effectively separated from the entrances to minimize adverse traffic/circulation conflicts within the site or to surrounding areas parking caused by vehicles waiting for service during peak business hours.
- C. That such use in such location conforms to good zoning practice, in that the North Montclair Downtown Specific Plan (NMDSP) -Town Center - zoning district allows drive-thru businesses and outdoor seating in conjunction with restaurants, subject to CUP approval at this location.

- D. That such use in such location is not contrary to the objective of any part of the adopted General Plan, in that the adopted General Plan encourages a wide range of retail and service uses within the retail commercial area to realize optimum benefits for the residents of the community.

SECTION 4. Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of a Precise Plan of Design under Case No. 2021-32:

- A. The proposed 3,950 sq. ft. Panera Bread Café project is consistent with the “Planned Development” land use designation of the City General Plan and the Town Center (TC) zoning district of the North Montclair Downtown Specific Plan. The proposed site plan and building design contribute to the ongoing development of an attractive and continuous Moreno Street streetscape and will be poised to complement future residential and commercial development in the NMDSP and MPDSP planning areas.
- B. The site plan, building form, height, drive-thru service lane location, and primary outdoor patio dining areas will contribute to the ongoing formation of the streetscape and development pattern envisioned by the NMDSP for Moreno Street.
- C. The proposed architectural design of the project as indicated on the submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP, features high-quality exterior materials and finishes, and incorporates appropriate lighting and landscape materials to give the project a distinctive and pleasing appearance.

SECTION 5. Based upon the substantial evidence presented to this City Council during the above-referenced hearing on December 20, 2021, including written and oral staff reports together with public testimony, this City Council hereby finds the proposed restaurant use with drive-thru service, to be consistent with the overall objectives of the City of Montclair General Plan, the North Montclair Downtown Specific Plan, the Montclair Municipal Code, and good planning principles, and recommends approval of the application subject to each and every condition set forth below.

Planning Division

- 1. This approval is for the following entitlements per approved plans on file with the Planning Division and dated October 6, 2021, for the new parcel at 5212 Moreno Street:
 - a. A Conditional Use Permit (CUP) to allow:
 - i. Drive-thru service and drive-thru lane for the new 3,950 square foot restaurant; and
 - ii. Outdoor dining areas with approximately 35 seats located on the south and east sides of the restaurant building.
 - b. A Precise Plan of Design for the for the proposed site plan, building design, landscape plans, and signage.
- 2. Minor modifications to this approval, which are determined to be in substantial conformance with the approved site plan, building elevations, landscaping, exterior lighting, and signage which do not intensify or change the use or require any deviations from adopted standards may be approved by the Director of Community Development upon submittal of prepared plans submitted for review and approval. Any modification, intensification, or expansion of the use and design plan deemed by the Director to be beyond that which is specifically approved with this PPD and CUP shall require review and approval by the City Council.
- 3. The above entitlements shall only be valid upon the effective date of City Council approval of the Lot Line Adjustment application associated with this project.
- 4. Prior to issuance of a grading and/or building permit, the applicants and/or project developer shall complete the following items:

- a. Provide black concrete used for the entire length of each drive-through lane, and the floor and adjacent apron of the proposed trash enclosure.
 - b. Show all automobile parking spaces with double-line (e.g. "hairpin") striping. Parking stalls shall be a minimum of 9'-0" in width as measured to the center of the "hairpin," and a minimum of 20'-0" in length.
 - c. Work with City staff to refine landscape plan sign program to be consistent with the standards of the NMDSP.
 - d. Provide catalog cuts for proposed exterior tables and chairs, umbrellas, trash receptacles, etc., for City review and approval. All patio furniture and umbrellas shall be made of high quality, durable materials. No plastic furniture shall be allowed.
 - e. An exterior lighting and photometric plan for the entire site. The plans shall indicate the location of all exterior light fixtures (area, building, parking lot, etc.) and the overall illumination levels across the site. All proposed exterior lighting shall comply with the following standards:
 - i. Provide a minimum maintained illumination level of one (1) foot-candle across the site.
 - ii. All parking lot and other freestanding light fixtures shall incorporate 90-degree cut-off style luminaires and flat lenses so as to direct illumination downward to the surface to be illuminated and away from public rights-of-way surrounding the subject site.
 - iii. The use of roof-mounted light fixtures wall packs, barnlighters, or other similar unshielded luminaires on the property shall be prohibited.
 - iv. Maximum total height for freestanding light fixtures shall be limited to 20 feet, inclusive of the height for concrete bases.
 - v. Above-grade concrete bases for lights, menu boards, speakers, vertical clearance bars, etc., shall be finished with colored stucco matching the primary color and finish of stucco on the buildings.
 - vi. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design that complements the architecture of the building.
 - f. Submit details for trash enclosure(s).
 - i. Each trash enclosure shall have a solid roof cover and be designed to complement the overall architecture of the main building.
 - ii. Contact Burrtec Waste Industries to determine the number of required bins and pick up schedules to support the most likely end user(s) of the buildings.
 - g. A plan to improve the appearance of the existing bus stop structure including new paint, landscaping, and other related improvements.
5. Prior to the issuance of a grading and/or building permit, the applicant shall submit a duly recorded copy of the Fourth Amendment to the Real Estate Agreement between the affected parties in the Target Shopping Center including the new site and use in regard to reciprocal access and parking. Please note, no grading and or building permits shall be issued for the project without this document.
 6. Upon City approval and recordation of the Lot Line Adjustment with the County of San Bernardino Recorder's Office, all previous entitlements associated with 5220 Moreno Street that parcel, including prior CUP approval for alcohol sales, shall be revoked and considered null and void.
 7. CUP approval shall be valid for a period of six months (180 calendar days) from the date of City Council approval and shall automatically expire on the six-month anniversary date of City Council action, unless the applicant is diligently pursuing building plan check toward eventual construction or

implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's CUP expiration date.

8. This PPD approval shall be valid for a period of one year from the date of City Council approval and shall automatically expire on the one year anniversary date of City Council action, unless the applicant is diligently pursuing building plan check toward eventual construction or implementation of the project. The applicant and/or property owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.
9. In establishing and conducting the subject use, the applicant shall at all times comply with any and all laws, ordinances, and regulations of the City of Montclair, the County of San Bernardino, and the State of California. Approval of this CUP and PPD shall not waive compliance with any such requirements.
10. Upon transfer, sale or re-assignment of the restaurant to another individual or entity, the applicant shall make full disclosure of the CUP requirements and restrictions to future buyers, transferees or assignees.
11. The applicant and property owner shall sign an Affidavit of Acceptance form and submit the document to the Planning Division within 15 days of receipt of the City Council Resolution approving the project.
12. This decision or any aspect of this decision may be appealed to the City Council within 15 days from the date of Planning Commission action, subject to filing the appropriate forms and related fees.
13. Within five (5) days of approval by the City Council, the applicant shall submit to the Planning Division a check in the amount of \$735.08 made payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) on December 10, 2021, as required by state law.
14. Restaurant hours shall be limited to 6:00 a.m. through 10:00 p.m. seven days a week. The applicant may close the restaurant earlier than the hours stated herein. Any extension of the restaurant hours beyond the limits stated herein shall require written notification to the Planning Division and is subject to City approval.
15. The sale or service of alcoholic beverages from the restaurant or upon the premises shall not be permitted without City review and approval, and appropriate licensing by the State Alcoholic Beverage Control Board (ABC).
16. The new use shall comply with following operational standards:
 - a. No outdoor display areas for merchandise are allowed at any time.
 - b. No exterior public telephones, vending machines, children's rides or other coin-operated machines shall be located on the site.
 - c. No outdoor storage, including shelving, boxes, supplies, etc.
 - d. On-site electronic arcade and amusement games shall be prohibited.
17. The use of cabinets or receptacles to collect used dishware, serving dishes and utensils, cups, etc., shall be limited in scope and designed to be screened from view and complement, not detract, from the appearance of the outdoor dining areas. The placement, size, and design of such receptacles are subject to Director review and approval.
18. The applicant and/or property owner shall ensure that a copy of the final City Council Resolution including all conditions of approval, be reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the project.

19. Prior to the commencement of business activities, the business owner shall apply for and obtain a City of Montclair Business License, and shall maintain a valid City business license at all times. Should such licensing be denied, expire or lapse at any time in the future, this permit shall become considered a violation of this condition and the use shall be subject to revocation proceedings.
20. The pick-up window associated with the drive-thru lane shall be covered by a solid roof or canopy structure integral and complementary to the architecture of the building to which it is attached, to the satisfaction of the Director of Community Development.
21. Speakers at the drive-thru ordering position shall be in compliance with the City's Noise Ordinance (Chapter 6.12 of the Montclair Municipal Code) at all times and shall be subject to periodic inspection by the City. Violation of this condition shall be grounds for modification of the hours of operation of the drive-thru, closing of the drive-thru until compliance can be achieved or revocation of the Conditional Use Permit.
22. The drive-thru lane shall be constructed of black concrete for the entire length of the lane. The condition of the drive-thru lane shall be maintained in a clean and sound condition at all times.
23. The following mandatory conditions are hereby imposed as part of the CUP approval:
 - a. The premises shall be maintained at all times in a neat and orderly manner. The timely removal of trash, used dishes/cups, carts, etc., and the regular sanitizing of tables and chairs in outdoor dining areas and surrounding areas (including parking field) shall be performed on a regular basis to ensure a clean, orderly, and appearance of the facility to the street.
 - b. Trash receptacles shall be provided in such number and at such locations as may be specified by the Director of Community Development.
 - c. All patio furniture shall be properly maintained with any damaged items being promptly repaired or replaced within 72 hours.
 - d. No alcoholic beverages shall be served and/or consumed anywhere on the subject premises.
 - e. The on-site manager shall take whatever steps are deemed necessary to assure the orderly conduct of employees, patrons, and visitors on the premises.
24. Prior to the issuance of building permits for the project, the property owner or applicant shall provide on plans submitted for Building Division Plan Check the following items to the satisfaction of the Director of Community Development:
 - a. Catalog cuts for proposed exterior tables and chairs, umbrellas, trash receptacles, dish collections cabinets, etc., for Director of Community Development review and approval. All patio furniture and umbrellas shall be made of high quality, durable materials. No plastic furniture shall be allowed.
 - i. Catalog cut outs for all building mounted light fixtures for Director of Community Development approval.
 - ii. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design that complements the architecture of the building. Freestanding parking lot luminaires shall match the style and color of freestanding light fixtures utilized for the adjacent parking lot.
 - iii. No roof-mounted light fixtures shall be allowed.
 - iv. The use of wall packs, barn lighters, or other similar unshielded luminaires on the property shall be prohibited.

- v. Soffit lights on the exterior of the building, including under drive-thru canopies, shall be flush-mounted with the surface to which they are attached.
25. No exterior security bars and roll-up doors shall be installed on windows and pedestrian building entrances.
26. All landscaping disturbed during construction shall be replanted subject to the approval of the Director of Community Development.
27. No outdoor storage of used fats, oils, or grease (FOG) shall be allowed within or outside of trash enclosures. Applicants are advised to utilize an internal collection system and contract with a certified company duly licensed for waste removal.
28. All graffiti and vandalism and/or damage to the subject site and/or structure shall be removed or repaired within 72 hours of notice from the City.
29. All rooftop or roof-mounted equipment shall be fully screened from view to the satisfaction of the Director of Community Development.
30. All satellite dish antennas, microwave receivers and transmitters, and other forms of communication equipment shall be located in a manner in accordance with the provisions of Chapter 11.46 of the Montclair Municipal Code.
31. Mechanical equipment including, but not limited to, utility meters, air conditioners, kitchen vents or hoods, repair equipment, etc., shall be located within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the City Planner. Wooden lattice or fence-like screens/covers are not appropriate within the context of a commercial development and are therefore not allowed.
32. No surface-mounted exposed conduit or electrical lines shall be allowed. Electrical switchgear, meters, etc. must be screened or housed in an enclosure, to the extent allowed by the utilities.
33. No live entertainment activities are included with this approval. It shall be the responsibility of the business owner to submit an application for an Entertainment Permit pursuant to the Montclair Municipal Code. Entertainment Permits shall be reviewed and approved by the Montclair Police Department.
34. Prior to the installation of any signs, the applicant shall submit an application(s) for City review and approval of a required Sign Permit and applicable building permits. All signs shall be consistent with the sign program approved for the project.
35. Temporary promotional signs shall comply with Chapter 11.72 of the Montclair Municipal Code, including, but not limited to the following:
 - a. Temporary banners for the purpose of announcing the grand opening or advertising promotions shall require a banner permit from the Planning Division prior to installation.
 - b. Promotional window signs shall not occupy more than 25 percent of the aggregate window area.
 - c. At no time shall pennants, inflatable signs, "human" signs, or other similar advertising devices be utilized on the property or off-site.
36. All signs shall be maintained at all times, in good appearance and operating condition. Exposed surfaces shall be cleaned regularly and painted as necessary. Broken and defective parts shall be immediately repaired or replaced.
37. A copy of the CUP approval letter and resolution with all conditions of approval related to the application shall be conspicuously posted

alongside the establishment's Business License and Certificate of Occupancy and shall be made available to law enforcement officers, Code Enforcement officers, and/or fire and building inspectors in the course of conducting inspections of said premises.

38. To ensure compliance with the conditions of the approval, a final inspection is required from the Building and Planning Divisions upon completion of construction and all improvements. The applicant shall contact the City to schedule an appointment for such inspections.
39. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative, or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void or annul, the any action of, or permit or approval issued by the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities, thereof (including actions approved by the voters of City), for or concerning the project, whether such actions, are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivision Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any action brought and City shall cooperate with the applicant in the defense of the Action.

Building Division

40. Submit four complete sets of plans including the following:
 - a. Site/Plot Plan.
 - b. Floor Plan.
 - c. Reflected Ceiling Plan.
 - d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams.
 - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
 - f. Provide an existing plan of the building including all walls to be demolished.
 - g. Waste recycling plan, recycling 65 percent of all construction debris.
41. The applicant shall comply with the latest adopted California Building Code, and other applicable codes, ordinances and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
42. A building, structure, sewage system, utility line, eave or projection of a structure, or similar shall not cross over a property line so as to encroach on another property. A project site consisting of more than one property shall be merged into a single property by way of an approved and recorded lot merger or lot line adjustment before the beginning of improvements to the site.
43. Submit two sets of structural calculations, and two sets energy conservation calculations.

44. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
45. The address for this location will be 5212 Moreno Street. Please refer to this new address on all plans submitted for plan check and subsequent building permit applications. The number will be temporary until the Lot Line Adjustment is recorded at the County of San Bernardino. When proof of recordation for the LLA is received by the Building Official, notifications will be sent by the Building Official to all appropriate agencies and utilities as an official notification of the permanent address.
46. Clearly indicate on submitted plans disabled-accessible path(s) by way of directional arrow, from the public entrance to the building, to the public right-of-way from the affected area of new construction or renovation. All required disabled-accessible parking lot signs, sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%).
47. Exposed raceways shall be prohibited on all building-mounted and freestanding signs. An architectural sign backing/raceway may be considered for approval by the Director of Community Development as part of a sign for commercial building.
48. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Paint and stucco in all cases shall not be below standard for the use applied.
49. Decorative foam trim shall not be used in areas subject to damage such as entry doors, low windows, wall corners, etc.
50. All mechanical devices and their component parts, such as air conditioners, evaporative coolers, exhaust fans, vents, transformers, or similar equipment, whether located on the ground or on the roof of the structure, shall be concealed on all sides from public view in a manner that is compatible with the architectural design of the building and to the satisfaction of the Planning Division.
51. All roof-mounted equipment, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division.
52. Fire sprinkler risers and roof access ladders shall be located entirely within the enclosed buildings. Double-detector check facility shall be adequately screened by landscaping or an architectural screen wall.
53. All trash enclosures shall be constructed of a material consistent with the primary type and color of that used on the building. The construction of such trash enclosure(s) shall conform to City standards and shall have a solid roof complementary to the main building. Black-colored concrete shall be used for the trash enclosure floor and its apron.
54. Construction drawings submitted to the Building Division for plan check review shall comply with Montclair Security Ordinance No. 357, including, but not limited to, adherence to the following standards:
 - a. The numerical address of the building shall be displayed in a maximum of two locations as follows:
 - i. Numerals shall be in a font acceptable to the Planning Division, minimum 10 inches in height, minimum 1½ inches in depth, and
 - ii. In a color that adequately contrasts with the background surface to which they are attached.
 - b. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination

of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.

55. No soil shall be imported or exported to or from the project site from an adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan satisfactory to the City Engineer shall be prepared showing the proposed haul route within the City. Subject plan shall include provisions for street sweeping and cleanup. Applicant/contractor shall comply with all NPDES requirements.
56. Underground Service Alert shall be notified 48 hours prior to any excavation at (800) 422-4133.
57. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
58. The applicant/developer shall install approved emergency lighting to provide adequate illumination automatically in the event of any interruption of electrical service.
59. The patio is not depicted on the floor plan. Table placement for the patio is required to be shown for accurate accessible widths access.
60. A Certificate of Occupancy is required prior to occupancy of the subject building. Issuance of a Certificate of Occupancy by the Building Official shall be contingent upon Fire Department inspection and approval of all conditions.
61. Prior to issuance of a Certificate of Occupancy, the person or corporation responsible for the preparation of the Water Quality Management Plan shall certify, in writing, to the Building Official that all conditions and requirements of the Water Quality Management Plan have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the Building Official that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the Water Quality Management Plan.
62. Prior to the issuance of the Certificate of Occupancy a Final Grade Certificate shall be provided to the Building Official issued from the Registered Civil Engineer of Record that all on-site improvements have been constructed in accordance with all City Standards, Specifications, Conditions of Approval and approved plans.
63. Temporary construction and storage trailers placed on the property shall first obtain approval from the Planning and Building Divisions. If any trailers will include uses for public access, handicap accessibility requirements shall apply. Before any trailer is set in its location, obtain all permits from the building division. Plans and structural calculations will be required for the tie-down devices. Trailers used for public use (and not used for construction only) are required to be handicapped accessible. The trailer will requires access to the facility by way of ramps which comply with the California Building Code (CBC) 2019 edition, Chapter 11B, in addition to access to each feature of the trailer.

Engineering

64. All streets public and private shall have sidewalks conforming to Americans with Disabilities Act. Widths and scoring patterns shall conform to City Standard 114.
65. The permanent pavement restoration limits on Moreno Street will be from the west property line spanning the Development frontage to the east property line, from the north curb to the median island curb. The overlay in the roadway will capture all street cuts for all wet and dry underground utilities. For any street cuts for utilities that go beyond the west and or

east property line, those areas will be included in the overall permanent pavement restorations limits. Should there be any street cuts spanning the median island to eastbound lanes, The permanent pavement restoration limits for the eastbound lanes will be the same as for the westbound lanes.

66. All work in the Right of Way must have a Construction and Street/Lane Closure Permit issued by the City of Montclair, Engineering Division.
67. All construction methods and practices shall be done per the City of Montclair Standards and General Permit Conditions.
68. All pavement damaged by excavation will be replaced with permanent pavement per City Standard 301 for paving and trench repair.
69. Replace all existing lifted or cracked curb gutter, damaged utility pull box lids, and sidewalk adjacent to the property. Additionally remove sidewalk that show signs of ponding or is pitting, scaling or spalling. Curb Ramps at Target Lane are not in compliance with ADA guidelines. See City Standard 116 for Wheelchair Ramps.
70. Restore striping legends on Target Lane.
71. All utilities in the public right-of-way portion of each street frontage adjacent to the site shall be placed underground. This requirement applies to electrical services (facilities operated at nominal voltages in excess of 20,000 volts not included), and switches, and where technology exists, telephone and cable television facilities as well.
72. All utilities within development boundaries shall be placed underground. This requirement applies to electrical services, transformers and switches, telephone, communications, and cable television facilities as well.
73. Approval of the WQMP is required prior to the preparation of the precise grading plan and/or other improvement plans.
74. A precise grading plan shall be prepared subject to the approval of the City Engineer. An erosion control plan is to be included and considered an integral part of the precise grading plan. Grading plans shall be designed in accordance with City standards and guidelines, and shall be on 24" by 36" sheets.
75. Prepare and submit to the satisfaction of the City Engineer a preliminary soils report addressing site geology, site stability, grading requirements, over-excavation requirements, and other pertinent soil information.
76. All drainage facilities shall comply with requirements of the approved WQMP.
77. All off site and on site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.
78. Prepare and submit to the satisfaction of the City Engineer a comprehensive grading and drainage plan prepared by a Registered Civil Engineer in conformance with Chapter 70 of the Uniform Building Code. Prior to commencement of any demolition, clearing and grubbing, and/or grading, a grading permit shall be obtained from the Building Division. Plan approval is required prior to issuance of a grading permit by the Building Division.
79. Prepare and submit to the satisfaction of the City Engineer plans for erosion control and storm water pollution prevention. The erosion control plan shall be an integral part of the grading plans. Plan approval is required prior to issuance of a grading permit by the Building Division. A general construction storm water permit may be required. Please contact Steve Stanton at 909-625-9441 for details.

80. No soil shall be imported to or exported from the site without first obtaining approval from the City Engineer. Prepare and submit to the satisfaction of the City Engineer a plan showing proposed haul routes. Plans shall include provisions for street sweeping and cleanup. Plan approval is required prior to issuance of a grading permit by the Building Division.
81. Prepare and submit to the satisfaction of the City Engineer a letter of non-interference from any utility company that may have rights or easement within the property boundaries.
82. Where street construction, surfacing, or resurfacing is required, all utility work within the frontage of the site shall be completed prior to the street being capped.
83. Payment of transportation-related development impact fees. Fees shall be assessed at the rate in effect at the time the fees are paid.
84. Underground Service Alert (800-422-4133) shall be notified 48 hours prior to any excavation at the site.
85. All off-site and on-site trenching and excavation shall conform to Cal-OSHA standards. Excavations that exceed five feet in depth require a Cal-OSHA permit.
86. All existing overhead utilities shall be placed underground and poles removed.
87. Developer shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code.
88. The Lot Line Adjustment may be submitted for plan checking prior to, in conjunction with, or after the submittal of the public improvement plans. Lot Line Adjustments submittals shall include a preliminary title report, reference deeds, closure calculations, reference maps, and other reference material as may be necessary to check the lot line adjustment map. An advance plan check fee, the amount to be determined by the City Engineer, shall be required at the time map is submitted.
89. Street, sewer, and storm drain plans shall be prepared in a format acceptable to the City Engineer and shall be submitted to the City Engineer's office for approval. An advance plan check fee, the amount to be determined by the City Engineer shall be required at the time plans are submitted. Construction and acceptance of street improvements, as per the approved plans, shall be required to obtain a release for a Certificate of Occupancy from the Building Division.
90. A Public Works construction permit shall be obtained from the Engineering Division prior to any removals or construction of improvements in the public right-of-way.
91. Vehicular access is required to all sewer and storm drain manholes. Easements shall be further deed restricted with respect to building to the satisfaction of the City Engineer.
92. Conduct a photometric study to determine compliance with minimum parking lot lighting requirements.

Environmental

93. Discharge of wastewater into the City of Montclair sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.
94. Regional Sewerage Supplemental Capital Outlay fees are required in accordance with Section 9.20.440 of the Montclair Municipal Code and the Inland Empire Utilities Agency (IEUA).

95. Connection to the City of Montclair Sanitary Sewer System is required. Additional comments may follow pending submittal of plans for plan check review.
96. A grease interceptor is required for this project, please complete the Waste Discharge Survey form and submit for sizing requirements. Contact Engineering Division Manager, Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
97. A Sampling Station/Sample Wye is required to be installed at the last point of the non-domestic waste line prior to connection to the domestic waste line and final connection to the main sewer line. Please include the Sample Wye schematic on the plumbing plan.
98. The Sampling Station/Sample Wye must be located in a location that will not be obstructed by equipment or storage. The clean-out cover for the Sample Wye shall be accessible for inspection at all times.
99. Interior grease removal devices are not permitted by County of San Bernardino and City of Montclair.
100. Trash enclosures must be designed in accordance with the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial Organics Recycling as established by California Department of Resources Recycling and Recovery (CalRecycle). Contact Engineering Division Manager, Steve Stanton at (909) 625-9444 for more information.
101. Documentation from Burrtec Waste Industries, Inc. (Burrtec) indicating that a service agreement has been set up with Burrtec that meets all Mandatory Commercial Recycling Requirements (AB 341) and Mandatory Organics Recycling Requirements (AB 1826) for waste hauling as established by the State of California and that the appropriate number of refuse/recycling dumpsters has been established, including meeting Montclair Municipal Code 6.16.025, Commercial recycling and organic waste recycling/diversion. Submit documentation to Engineering Division Manager, Steve Stanton (sstanton@cityofmontclair.org). Contact Steve Stanton at (909) 625-9444 for more information.
102. The WQMP must have preliminary approval from the Engineering Division prior to obtaining grading/building permit(s). Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
103. The property owner shall be responsible to contract with a qualified firm to inspect and maintain any stormwater treatment devices specified by the approved WQMP, following all WQMP recommendations. It shall also be the responsibility of the property owner to maintain inspection reports and have them readily available for review by City staff upon request. In the event that any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the property owner to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.
104. Prepare and submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and road installation, and vertical construction to the satisfaction of the City Engineer. Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for more information.
105. At the time of Grading permit issuance; Post-Construction BMP inspection permit fees associated with the approved WQMP shall be paid. Contact Steve Stanton at (909) 625-9444 or (sstanton@cityofmontclair.org) for further information regarding permit and fees.
106. Prior to issuance of a Certificate of Occupancy, the applicant shall:
 - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.

- b. Submit to the Engineering Division as built drawings as it relates to the WQMP.
 - c. Record the WQMP Maintenance Agreement with the County of San Bernardino and provide evidence of said recording to the Engineering Division.
 - d. Provide a letter from the Engineer of Record that states all BMPs associated with the WQMP are constructed and functional per the City approved WQMP.
 - e. Provide Certification of Landscape Completion form, to be completed by the landscape architect of record.
107. Prior to release of the certificate of occupancy for the building, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the Engineering Division Manager that all conditions and requirements of the WQMP have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the Engineering Division Manager that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the WQMP.

Landscape Conditions of Approval Associated with the WQMP

108. It is required prior to receiving Certificate of Occupancy the Landscape Architect of record to comply and submit a Letter of Completion to both Planning Division and Engineering Division.
109. Property Owner/Lessee is required to employ a Bonded and California Licensed C-27 Landscape Contractor to conduct all landscaping on property.
110. Landscape Contractor must have City Business License to operate in the City of Montclair.
111. To ensure the landscaping associated with the stormwater treatment device(s) is maintained properly for the life of the project, the property owner/lessee must provide to the Engineering Department every third year after receiving the Certificate of Occupancy, a wet stamped letter of certification from a licensed, certified Landscape Architect, or recognized horticulturist organization or business.
112. The certified letter must state that the plants located within the boundaries of and immediately adjacent to stormwater treatment devices are currently in good health and has been maintained to continue to promote the long-term functional and aesthetic performance of the stormwater treatment device. For example, if the planted component of the stormwater device was designed to control erosion, aid in pollutant capture, or maintain permeability, the plant material must be kept at a level of health and vigor to continually meet these functional requirements.
113. Individuals qualified to submit the certification letter must be able to identify species present and report on their conditions. Providing the original planting design documents to the consulting horticulturist may help them in this process.
114. If mulch is present in the assessment area, this must be noted in the letter along with the current depth of the mulch layer and a description of which areas of the stormwater treatment device are mulched.
115. Five to ten clear and representative site photos showing the condition of the various plant materials located in and adjacent to the stormwater treatment device and any other notable conditions related to the device, printed in color on standard 8.5 x 11 paper, must also be submitted as part of the letter.

116. Representatives of the Engineering Department may follow up with site inspections to confirm the accuracy of certification letters and the overall functional condition of stormwater treatment devices.

Police Department

117. In conjunction with the ongoing operation of the business, the premises shall comply with all applicable local, State, and Federal requirements placed upon them by any regulatory or governing entity.
118. The activity level of the business shall be monitored by the Police Department to establish the level of police services used for the business. Should the level of police services demonstrate that the applicant has not controlled excessive, or unnecessary activity resulting in high use of police services then this Conditional Use Permit shall be reviewed for consideration of further conditions, modifications or revocation.
119. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Community Development Director and the Police Chief or their designee.
120. If applicable, the parking lot of the premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking lot.
121. The premises shall install and maintain a closed circuit video surveillance (CCVS) system. The system shall at minimum be capable of monitoring all entrances/exits to the premises and be positioned as to allow for identification of patron facial features and physical characteristics. A minimum of one camera shall be placed in a position to monitor the parking lot of the premises, positioned in a manner which allows for the widest view from the entrance, without significant lens distortion, and one camera per entrance/exit door. Typical acceptable camera angles range from 50-130 degrees. Cameras shall be capable of no less a resolution than 1920x1080 pixels, otherwise known as 1080p. Cameras shall be capable of no less a resolution than 1920x1080 pixels, otherwise known as 1080p. All cameras shall have IR or low light capability.

Audio recording is desirable, but not a requirement. Camera footage shall be retained for a period no less than 90 days. To conserve storage space, cameras may reduce frame-rate when no motion is detected, however must record at no less than 30 frames per second when motion is detected. Motion sensors shall be configured to activate properly in all areas covered including the parking area, if applicable. Motion sensors may be configured to prevent incidental activation from hanging or moving displays. Depending on the nature of the premises, additional cameras may be required.

122. Alarm systems are encouraged to compliment the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.

Fire Department

123. Prior to the to the issuance of a grading permits a fire department access plan shall be submitted to the City of Montclair for review and approval. The fire department access plan shall comply with the requirements specified by the City of Montclair Guideline for Fire Department Access & Water Requirements for Commercial & Residential Development, and the California Fire Code, Chapter 5.
124. Prior to the to the issuance of a grading permits, evidence of sufficient fire flow of 1,500 GPM for 2 hours shall be provided to the Montclair Fire Prevention.
125. A fire department access road complying with the CFC, Chapter 5 and the approved fire department access plans shall be installed prior to building construction.

126. The fire department access road shall be inspected by Montclair Fire Prevention Bureau prior to building construction.
127. The fire department access road shall remain unobstructed at all times.
128. A fire department connection (FDC) shall be provided and located within 50 feet of a public fire hydrant. The use of a private hydrant may be used with the use of an aboveground check valve to prevent the flow from the FDC back to the fire hydrant, and with the approval of Montclair Fire Prevention Bureau.
129. All required fire hydrants shall be installed and operational prior to building construction. All fire hydrants shall remain operational during construction.
130. All required fire hydrants shall be readily visible and immediately accessible. A clear space of not less than 3-feet shall be maintained at all times.
131. Prior to construction a temporary address sign shall be posted and clearly visible from the street.
132. The permanent building address shall be provided and either internally or externally lighted during hours of darkness. The address shall be clearly visible from the street fronting the property and comply with California Fire Code Section 505.1 for size and color.
133. Montclair Fire Prevention Bureau approval shall be obtained prior to the storage and/or use of hazardous materials as defined by the California Fire Code.
134. The building shall be provided with an automatic fire sprinkler system in accordance with NFPA 13. Construction plans shall be submitted for review and approval to the City of Montclair prior to installation.
135. Prior to building final, the building shall be provided with a Knox Lock key box located no more than seven-feet above the finished surfaced and near the main entrance door.

SECTION 5 The location and custodian of the documents and any other material that constitute the record of proceedings upon which the City Council based its decision is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

SECTION 6. Effective Date. This Resolution shall become effective upon its adoption.

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

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3329 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 20XX, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 30, 2021.

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



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 Registers dated December 6 and 20, 2021, and the Payroll Documentation dated November 7 and 21, 2021, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated December 6, 2021, totals \$2,216,458.35.

The Warrant Register dated December 20, 2021, totals \$1,323,645.63.

The Payroll Documentation dated November 7, 2021 totals \$661,627.00 gross, with \$459,833.71 net being the total cash disbursement.

The Payroll Documentation dated November 21, 2021 totals \$634,674.75 gross, with \$436,931.96 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:	DECEMBER 20, 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 November 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 November 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 11.01.21-11.30.21 in the amounts of \$5,823.85 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 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 November 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 11.01.21-11.30.21 in the amount of \$37,599.86 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 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 November 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 November 30, 2021, pursuant to state law.

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 11.01.21-11.30.21 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 November 30, 2021.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 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 must review the emergency action at every regularly scheduled meeting after making the declaration to determine the need to continue the action by a fourth-fifths majority vote.

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 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. It 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 recommended replacement. The replacement will be a prefabricated steel truss bridge to mitigate the risks that left the existing bridge vulnerable to fire. 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 a state-licensed structural engineer has preapproved its design. Compared to a wooden structure, the construction of the steel truss bridge is completed at an accelerated pace since it is delivered assembled and dropped into place.

The City of Montclair is a healthier and more equitable City due to safer and more connected roadways through active transportation options. SBCTA recognizes the value and importance of the PE trail. To that end, SBCTA has shown good faith and leadership by graciously offering to cover a percent of the cost, up to \$100,000, to replace the bridge through their TDA Grant Program. 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. The City applied for the grant, and SBCTA's General Policy

Committee awarded \$227,544 for the Project. The City will cash flow the Project and seek reimbursement from SBCTA at a future date.

Currently, Pacific Electric Trail commuters are being detoured from the regional trail to Arrow Highway. To reduce the impact of the bridge closure, City staff will continue to work diligently through the use of the emergency contracting procedures to hire various consultants and contractors to complete the bridge replacement. Contech Engineered Solutions will fabricate the bridge. Biggs Cardosa Associates (BCA), a structural engineering consultant, will design the bridge deck and modify 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.

December 20, 2021 Update

The start of advertisement for the Project began on December 6, 2021, with a bid opening date of January 6, 2022. Staff will review the proposals for completeness and accuracy, and the contract will be awarded immediately to the lowest responsive and responsible bidder.

The awarded contractor should have the damaged bridge removed and disposed of before the arrival of the new bridge in late January.

FISCAL IMPACT: The estimated cost to replace the Pacific Electric Trail Bridge is \$450,000. SBCTA will contribute a total of \$327,544 in TDA Grant funding, and General Fund Reserves will cover the remaining project costs.

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:	DECEMBER 20, 2021	FILE I.D.:	STA818
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	10	PREPARER:	S. STANTON

SUBJECT: CONSIDER AMENDING THE 2019–2024 CAPITAL IMPROVEMENT PROGRAM TO ADD THE ZONE 5 AND 6 STREET REHABILITATION PROJECT

CONSIDER AUTHORIZING A \$4,000,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND FUNDS FOR COSTS RELATED TO THE ZONE 5 AND 6 STREET REHABILITATION PROJECT

CONSIDER AUTHORIZING STAFF TO ADVERTISE FOR BID PROPOSALS FOR CONSTRUCTION OF THE ZONE 5 AND 6 STREET REHABILITATION PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider amending the 2019–2024 Capital Improvement Program (CIP) to add the Zone 5 and 6 Street Rehabilitation Project. Amendments to the CIP, non-budgeted appropriations, authorization to advertise for bid proposals, are subject to City Council approval.

BACKGROUND: The Zone 5 and 6 Street Rehabilitation Project will resurface residential streets located between the limits of Brooks Street on the north, Benson Avenue on the east, Phillips Boulevard on the south, and Mills Avenue on the west.

The project will also include a few residential streets that were not completed as part of the Zone 2 project, back in 2015. The Zone 2 residential streets being included as part of the Zone 5 and 6 Street Rehabilitation Project are located between Palo Verde Street on the north, Poulson Avenue on the east, San Bernardino Street on the South and, Helena Avenue on the west.

A map identifying the entire Zone 5 and 6 Street Rehabilitation Project, including the Zone 2 streets has been attached for reference.

Over the years, City tree roots have caused uplifting of curbs, gutters, and sidewalks, creating tripping hazards and unsafe conditions for residents. As part of this project, several City trees will be removed and replaced. Proposed improvements include removal and replacement of damaged curb, gutter, and sidewalk; replacement of non-compliant Americans with Disabilities Act (ADA) pedestrian ramps; grinding of existing asphalt concrete pavement; and a new asphalt concrete pavement overlay.

The City Engineer has reviewed the plans and specifications for the project and has determined that they are in conformity with applicable statutes, codes, standards and/or guidelines.

FISCAL IMPACT: The Zone 5 and 6 Street Rehabilitation Project would be funded using \$4,000,000 of 2021 Lease Revenue Bond funds. The cost to advertise this project for bid proposals should not exceed \$2,500.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Zone 5 and 6 Street Rehabilitation Project:

1. Amend the 2019-2024 Capital Improvement Program to add the Project;
2. Authorize a \$4,000,000 appropriation from 2021 Lease Revenue Bond funds for costs related to Project; and
3. Authorize staff to advertise for bid proposals for construction of the Zone 5 and 6 Street Rehabilitation Project.

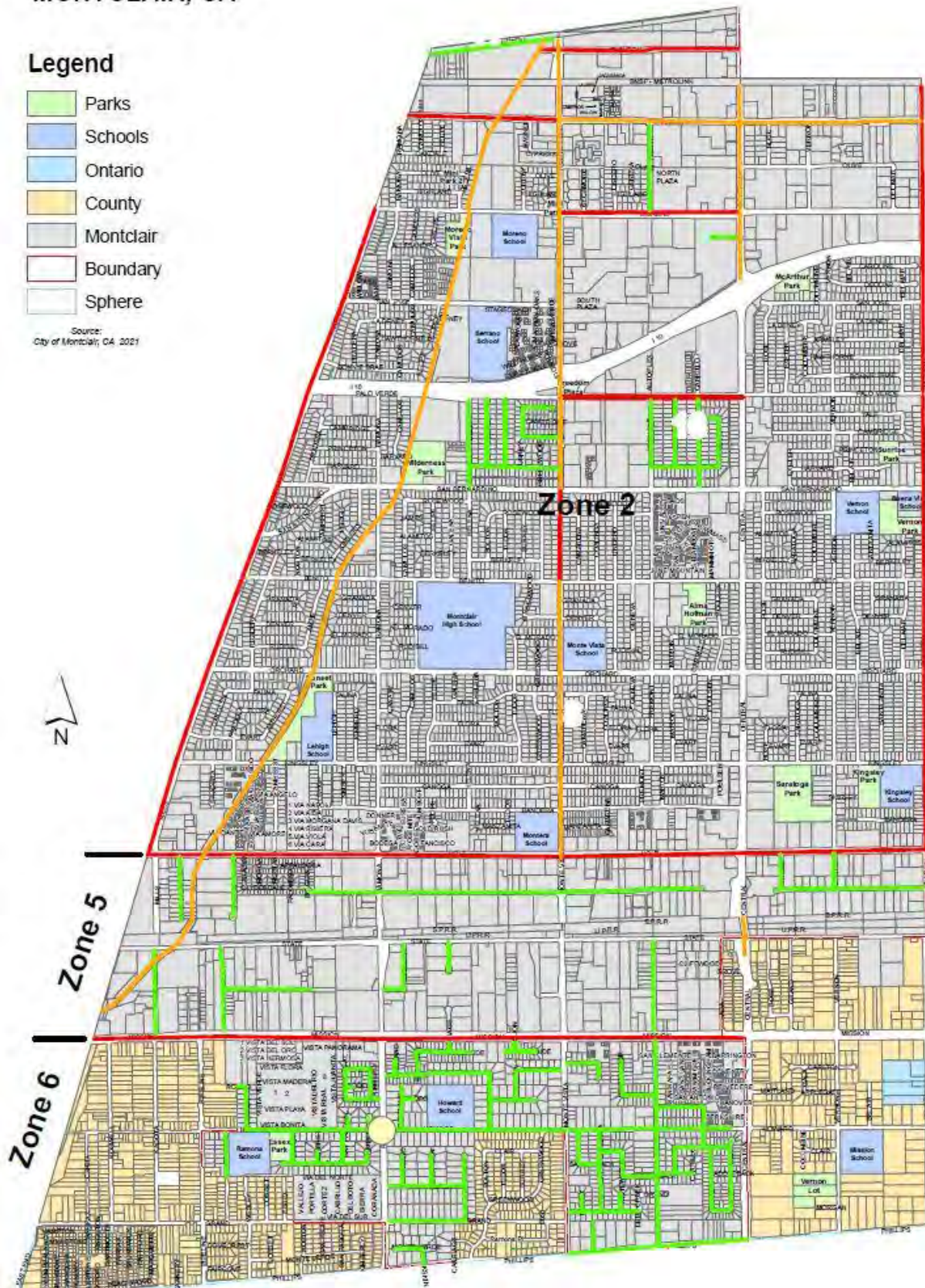
Projects Map

MONTCLAIR, CA

Legend

- Parks
- Schools
- Ontario
- County
- Montclair
- Boundary
- Sphere

Source:
City of Montclair, CA, 2021



Infrastructure Fund Capital Project Funding Information

Project Name: Zone 5-6 Street Rehabilitation Project
 Project Details: The rehabilitation project will repair curb, gutter, and sidewalk, resurface pavement and replace traffic striping. Limits are from Brooks Street to Phillips Boulevard. Between the western City limits to Eastern City limits. A small section of Zone 2 will be included south of Palo Verde St.

Preparation Date: December 20, 2021 Department: Public Works / Engineering
 Project No. (Assigned by Finance): _____ Contact/Ext.: M. Heredia/X.441

Phase	Prior Years	Fiscal Years				Total	Fund/Program
		2021/2022	2022/2023	2023/2024	2024/2025		
Environmental							
Design							
R/W Acquisition							
Construction	4,000,000.00						Bond Proceeds
Total	4,000,000.00	0.00	0.00	0.00	0.00	4,000,000.00	

Approvals: _____ Date: 12/14/21
 Department: Public Works / Engineering Dept. By: M. Heredia
 Finance By: [Signature] Date: 12-14-2021
 City Council Date: _____
 Revision Number: _____
 Total Project Cost: \$4,000,000.00



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** VEH450/VEH120
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** POLICE
ITEM NO.: 11 **PREPARER:** B. KUMANSKI
SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF THREE 2022 FORD EXPLORER INTERCEPTOR UTILITY VEHICLES FROM FRITTS FORD IN THE TOTAL AMOUNT OF \$116,793.90

CONSIDER DECLARING TWO (MODEL YEARS 2008 & 2011) FORD CROWN VICTORIA POLICE INTERCEPTOR VEHICLES AND ONE 2019 FORD EXPLORER INTERCEPTOR UTILITY VEHICLE AS SURPLUS AND AVAILABLE FOR PARTS OR FOR SALE AT AUCTION

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of three 2022 Ford Explorer Interceptor Utility vehicles to replace two vehicles currently used by Police Department personnel and one wrecked patrol vehicle currently being used for parts.

BACKGROUND: The City Council approved the purchase of three 2022 Ford Explorer Interceptor Utility vehicles in the Police Department Fiscal Year 2021-22 Budget. Two of the new vehicles would replace one 2008 (Unit #21) and one 2011 (Unit #22) Ford Crown Victoria Police Interceptor in the Police Department's fleet. The third new Ford Explorer Interceptor Utility vehicle would replace a 2019 Ford Explorer Interceptor Utility vehicle (Unit #11), which was wrecked this past fiscal year and is currently being utilized for parts. Mileage on one Crown Victoria Police Interceptor vehicle is high and both are in poor condition, with worn interiors and other physical and mechanical damage. A third vehicle (Unit #13), a 2013 Ford Explorer Interceptor Utility vehicle proposed for replacement in the 2021-22 Budget, will remain in the Department's fleet for another year.

Bid quotations for the purchase of three 2022 Ford Explorer Interceptor Utility vehicles were received from the following vendors:

<i>Vendor</i>	<i>Bid Amount</i>
Fritts Ford	\$116,793.90
Sunrise Ford	\$125,471.85
National Auto Fleet Group	\$125,305.98

Fritts Ford provided the lowest bid and is the recommended vendor for this purchase.

Additionally, Units 11, 21, and 22 are proposed to be declared as surplus and made available for parts to support vehicles currently in service in the Police Department's Patrol fleet or for sale at auction. The vehicle identification information is as follows:

<i>Year / Model</i>	<i>Unit</i>	<i>VIN</i>	<i>Mileage</i>	<i>Est. Value</i>
2008 Ford Crown Victoria	21	2FAFP71V18X150467	99,166	\$2,000
2011 Ford Crown Victoria	22	2FABP7BV4BX159622	111,346	\$2,000
2019 Ford Interceptor Utility	11	1FM5K8AR9JGA83590	60,500	\$5,000

FISCAL IMPACT: If authorized by the City Council, funding for the purchase of three 2022 Ford Interceptor Utility vehicles would result in an expenditure of \$116,793.90 from the Police Department Fiscal Year 2021-22 Budget from Equipment Replacement Fund Account No. 1750-4426-62020-400-00000. There would be no fiscal impact to the City as a result of declaring existing vehicles in the Patrol fleet as surplus and making them available for parts. However, the City could receive up to \$9,000 from the auction of said vehicles. Proceeds from the sale would be credited to the Equipment Replacement Fund.

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

1. Authorize the purchase of three 2022 Ford Explorer Interceptor Utility vehicles from Fritts Ford in the total amount of \$116,793.90.
2. Declare two (model years 2008 and 2011) Ford Crown Victoria Police Interceptor vehicles and one 2019 Ford Explorer Interceptor Utility vehicle as surplus and available for parts or for sale at auction.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** VEH120/VEH450

SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** COMMUNITY DEV.

ITEM NO.: 12 **PREPARER:** M. WESTERLIN

SUBJECT: CONSIDER AUTHORIZING A \$94,846.03 ALLOCATION FROM THE EQUIPMENT REPLACEMENT FUND FOR THE PURCHASE OF TWO VEHICLES FOR USE BY THE CODE ENFORCEMENT DIVISION

CONSIDER AUTHORIZING THE PURCHASE OF TWO 2022 FORD EXPLORER INTERCEPTOR UTILITY VEHICLES FROM FRITTS FORD IN THE TOTAL AMOUNT OF \$94,846.03

CONSIDER DECLARING ONE 2005 FORD TAURUS VEHICLE AND ONE 2006 FORD CROWN VICTORIA INTERCEPTOR VEHICLE AS SURPLUS AND AVAILABLE FOR PARTS OR FOR SALE AT AUCTION

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of two 2022 Ford Explorer Interceptor Utility vehicles to replace two existing vehicles used by Code Enforcement personnel.

BACKGROUND: Staff is requesting approval to purchase two 2022 Ford Explorer Interceptor Utility vehicles for use by the Code Enforcement Division. The new vehicles will replace two existing vehicles, a 2005 Ford Taurus and a 2006 Ford Crown Victoria, that have been in service for more than 15 years and have excessive mileage and/or extensive wear and tear from regular use. Prior to their use by Code Enforcement personnel, both of these vehicles were in use by the Human Services and Police Departments, respectively. For these reasons—age, mileage, and wear—replacement with new vehicles has become necessary. The new truck-based Explorer vehicles will be a significant improvement over the existing sedan vehicles in that they offer more versatility to the Code Enforcement Division in carrying out their regular duties, and in assisting homeless individuals with transport and services.

In accordance with City policy, staff obtained three quotes from different dealerships as noted below. The lowest bid obtained was from Fritts Ford, which is the recommended vendor for this purchase. Total expenditures for the new Ford Explorer vehicles with added equipment totals \$94,846.03, as detailed below:

Bid Quotations for New Ford Explorer Vehicles			
Vendor	Cost Quote (Two Vehicles)	Added Equipment* (Two Vehicles)	Total (Two Vehicles)
Fritts Ford	\$72,328.00	\$22,518.03	\$94,846.03
Sunrise Ford	\$74,184.52	\$22,518.03	\$96,702.55
National Auto Fleet	\$77,869.26	\$22,518.03	\$100,387.29
*See Added Equipment Details Below			

The quotes for added on equipment are from two sole source vendors with specific expertise in outfitting the City’s Police vehicles. Using the same vendors for this task ensures consistency with equipment, procedures for part replacement, and service. When the added equipment is out of warranty on the Code Enforcement vehicles, City maintenance staff will perform routine service and any necessary repairs.

Motorola Solutions provides radio communication proficiency in properly programming the radios to utilize the correct frequencies for local and county communication. *10-8 Retrofit Inc.*, will equip the new Code Enforcement vehicles with the specified equipment to support Code Enforcement personnel in carrying out their mission.

Added Equipment Details	
Vendor/Equipment	Cost (for two Vehicles)
Motorola Solutions (communication radios)	\$12,270.86
10-8 Retrofit Inc. (durable seats, protection cages, emergency light bars, computer stands)	\$10,247.17
Total	\$22,518.03

The two vehicles identified for surplus are:

Recommended Vehicles for Surplus				
Year and Make	Unit	VIN	Mileage	Plate Number
2005 Ford Taurus	110	1FAFP56U55A160394	163,448	5PNR102
2006 Ford Crown Victoria	103	2FAFP74V16X157279	97,421	1191148

FISCAL IMPACT: If authorized by the City Council, funding for the purchase of two 2022 Ford Explorer Interceptor Utility Vehicles would result in an expenditure of \$94,846.03 from the Equipment Replacement Fund. There is no fiscal impact to the City by declaring existing vehicles as surplus and making them available for parts. If the vehicles are sold at auction, the proceeds would be credited to the Equipment Replacement Fund.

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

1. Authorize a \$94,846.03 allocation from the Equipment Replacement Fund for the purchase of two vehicles for use by the Code Enforcement Division.
2. Authorize the purchase of two 2022 Ford Explorer Interceptor Utility Vehicles from Fritts Ford in the total amount of \$ 94,846.03.
3. Declare one 2005 Ford Taurus vehicle and one 2006 Ford Crown Victoria Interceptor vehicle as surplus and available for parts or for sale at auction.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** EQS230-20
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 13 **PREPARER:** M. PARADIS

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF A 2022 FORD SUPER DUTY F-250 PICKUP TRUCK FROM NATIONAL FLEET AUTO GROUP FOR \$44,674.16

CONSIDER AUTHORIZING A \$4,674.16 ALLOCATION FROM THE EQUIPMENT REPLACEMENT FUND FOR THE PURCHASE AND INSTALLATION OF BEACON LIGHTS AND STROBES FOR THE VEHICLE

CONSIDER DELCARING ONE 2003 FORD F-250 PICKUP TRUCK AS SURPLUS AND AVAILABLE FOR PARTS OR FOR SALE AT AUCTION

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of a 2022 Ford Super Duty F-250 pickup truck, and the allocation of funds to install beacon lights and strobes on the vehicle; and to consider declaring the vehicle being replaced as surplus. In accordance with the City’s Purchasing Manual, equipment purchases totaling over \$15,000 require City Council approval.

BACKGROUND: The City currently owns a 2003 Ford F-250 pickup truck (Unit 208) assigned to the Public Works Department, which has a seized engine. The Department had budgeted to replace this vehicle in the current Fiscal Year. Staff attempted to obtain three quotes from local dealerships for an identical truck; however, similar trucks are currently unavailable due to vehicle shortages. Staff obtained quotes for comparable vehicles currently available in dealership inventory. The table below shows the three quotes obtained from three auto dealerships.

<i>Company</i>	<i>Vehicle</i>	<i>Quote</i>
National Fleet Auto Group	2022 Ford F-250	\$44,674.16
Mountain View Chevrolet	2022 Chevrolet 2500	\$48,217.00
MK Smith Chevrolet	2022 Chevrolet 2500	No Response

After contacting all three dealerships to provide estimates, the City’s mechanic and the Public Works Facilities/Maintenance Assistant Manager determined that the quote from National Fleet Auto Group is the best value for the City. The new F-250 truck will also require the installation of beacon lights and strobes for better visibility and safety. The cost to install the beacon lights and strobe is \$5,000. The total cost of the vehicle plus the beacon lights and strobes will be \$49,674.16.

FISCAL IMPACT: Funds from the Equipment Replacement Fund in the amount of \$45,000 were allocated for a 2022 Chevy 2500 Regular Cab Flatbed Truck in the Fiscal Year 2021-22 Budget, and will be used toward the purchase of the Ford F-250 truck. The additional \$4,674.16 would also be paid by the Equipment Replacement Fund.

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

1. Authorize the purchase a 2022 Ford Super Duty F-250 from National Fleet Auto Group for \$44,674.16.

2. Authorize a \$4,674.16 allocation from the Equipment Replacement Fund for the purchase and installation of the beacon lights and strobes for the vehicle.
3. Declare one 2003 Ford F250 pickup truck as surplus and available for parts or for sale at auction.



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** EQS230-20
SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 14 **PREPARER:** M. PARADIS

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF A JOHN DEERE 1600 TURBO SERIES III COMMERCIAL WIDE AREA MOWER FROM STOTZ EQUIPMENT FOR \$82,789.58 FOR TURF MAINTENANCE AT CITY PARKS

CONSIDER AUTHORIZING A \$2,789.58 APPROPRIATION FROM THE EQUIPMENT REPLACEMENT FUND FOR USE TOWARD THE PURCHASE OF THE MOWER

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of a commercial wide area mower for turf maintenance for all City parks. In accordance with the City's Purchasing Manual, equipment purchases totaling over \$15,000 require City Council approval.

BACKGROUND: The City currently owns a wide area mower that is well past its service life. Unit 409 was purchased in 2002 and has over 8,000 hours of use. The life expectancy of a commercial wide area mower is eight years, or 2,000 hours.

Staff obtained three quotes from equipment supply companies as shown below:

<i>Supply Company</i>	<i>Equipment</i>	<i>Quote</i>
Stotz Equipment	John Deere 1600 Turbo Series III	\$82,789.58
RDO Agriculture Equipment Co.	John Deere 1600 Turbo Series III	\$80,988.26
Turfstar	Toro Groundmaster 4000-D	\$90,206.91

The John Deere 1600 and Toro Groundmaster 4000-D are commercial wide area mowers with similar cutting areas. The City's mechanic and the Public Works Operations Assistant Manager reviewed the quotes. After evaluating the quotes, the Stotz Equipment quote was determined to be the best value for the City as the quoted mower has two additional rollover supports. Additionally, Stotz Equipment is a local company based in Montclair.

FISCAL IMPACT: Funding in the amount of \$80,000 for a new commercial wide area mower was included in the Fiscal Year 2021-2022 Operations Budget (\$40,000 from the Park Maintenance Fund and \$40,000 using the Equipment Replacement Fund). The additional \$2,789.58 will be paid by the Equipment Replacement Fund.

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

1. Authorize the purchase of a John Deere 1600 Turbo Series III commercial wide area mower from Stotz Equipment for \$82,789.58 for turf maintenance at City parks.
2. Authorize a \$2,789.58 allocation from the Equipment Replacement Fund for use toward the purchase of the mower.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	SEW100-A1
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	15	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN A JOINT 12-MONTH NOTIFICATION LETTER TO THE INLAND EMPIRE UTILITIES AGENCY FOR THE CHINO BASIN REGIONAL SEWAGE SERVICE CONTRACT – EXERCISE OF OPTION FOR CONTINUED SERVICE		

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing City Manager Edward C. Starr to execute a joint letter on behalf of the City of Montclair providing the required 12-month notice to the Inland Empire Utilities Agency (IEUA) for the Chino Basin Regional Sewage Service Contract – Exercise of Option for Continued Service in case the contract lapses in 2023 before a new contract is initiated.

BACKGROUND: The Inland Empire Utilities Agency (IEUA), formerly referred to as Chino Basin Municipal Water District (CBMWD) in the original regional sewage service contract, provides wastewater treatment and disposal services for all retail agencies within its boundary. The retail agencies include the cities of Chino Hills, Chino, Fontana, Montclair, Ontario, Upland, and the Cucamonga Valley Water District. These services are conducted via a regional contract initiated in the late 1970s, which was amended in 1984 and 1994.

Over the last few months, City staff, along other retail agencies, have been participating in active negotiations with IEUA to update the agreement. A fundamental change of condition from 1994 has been the expansive progression of recycled water direct use and, most recently, groundwater recharge. These negotiations are complex and ongoing. The original contract is set to expire in January 2023. The original contract also has a renewal provision, subject to a 12-month notification. The purpose of this joint letter from the retail agencies is to fulfill the notification requirement to IEUA to extend the contract. Although the contract negotiations may ultimately yield subsequent modification to certain terms, this extension will carry forward all the existing terms until such modifications are agreed to by all parties.

The Chino Basin Regional Sewage Service Contract can be downloaded from or viewed online at the following URL:

<https://www.cityofmontclair.org/documents/chino-basin-regional-sewage-service-contract/>

FISCAL IMPACT: The proposed Exercise of Option for Continued Service serves as a procedural requirement for continuation of service under the current contract. There is no fiscal impact as a result of this action.

RECOMMENDATION: Staff recommends the City Council authorize City Manager Edward C. Starr to sign a joint 12-month notification letter to the Inland Empire Utilities Agency for the Chino Basin Regional Sewage Service Contract – Exercise of Option for Continued Service.



By Certified Mail

Shivaji Deshmukh, General Manager
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Steven J. Elie, Secretary/Treasurer
Inland Empire Utilities Agency
6075 Kimball Avenue
Chino, CA 91708

Re: Chino Basin Regional Sewage Service Contract (“Sewage Service Contract”)
Exercise Of Option For Continued Service

Dear Messrs. Elie and Deshmukh:

As you know, on October 13, 2021, the Regional Contracting Agencies (“RCAs”) submitted to the Inland Empire Utilities Agency (“IEUA”) a draft of an Amended and Restated Sewage Service Contract for IEUA’s consideration. The RCAs realize that the draft is still being reviewed by IEUA but in the interim, the RCAs wanted to insure that all procedural requirements were met for continuing service under the current Sewage Service Contract.

Section 29. RENEWAL; OPTION FOR CONTINUED SERVICE in the current Sewage Service Contract provides, in part, that no later than two years prior to the end of the term of this contract, the parties shall negotiate for the extension or renewal of the contract upon comparable terms and conditions. As you know, these negotiations are ongoing.

Section 29 also provides that if the parties have yet to agree to a new or renewed contract, then any Contracting Agency, by written notice given to IEUA at least 12 months prior to expiration of said term, may elect to receive continued service after the expiration of said term on conditions set forth in Section 29.

Since negotiations are ongoing, and to preserve the ability to continue to work collaboratively toward an Amended and Restated Sewage Service Contract, the undersigned RCAs hereby notify IEUA of their election, in compliance with the 12-month requirement, to receive continued service after the term expiration on January 2, 2023 and to comply with the conditions in Section 29. It is our hope that all parties can reach agreement on an Amended and Restated Agreement during 2022 but just in case, the RCAs wanted to make sure to complete this procedural step so that service may continue as currently provided.

The undersigned RCAs look forward to continuing our collaboration with IEUA toward development of an Amended and Restated Sewage Service Contract.

CITY OF CHINO

By: _____

Name: Matt Ballantyne

Title: City Manager

Date: _____

CITY OF CHINO HILLS

By: _____

Name: Benjamin Montgomery

Title: City Manager

Date: _____

CUCAMONGA VALLEY WATER DISTRICT

By: _____

Name: John Bosler

Title: General Manager

Date: _____

CITY OF FONTANA

By: _____

Name: Shannon Yauchzee

Title: Interim City Manager

Date: _____

CITY OF MONTCLAIR

By: _____

Name: Edward C. Starr

Title: City Manager

Date: _____

CITY OF ONTARIO

By: _____

Name: Scott Ochoa

Title: City Manager

Date: _____

CITY OF UPLAND

By: _____

Name: Michael Blay

Title: City Manager

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	PER187
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	16	PREPARER:	J. HAMILTON
SUBJECT:	CONSIDER APPROVAL OF THE HIRING OF RETIRED ANNUITANT ROSEMARY HOERNING AS A CITY ENGINEERING CONSULTANT AND AUTHORIZATION TO PAY WAGES WITH LEASE REVENUE BOND FUNDS ALLOCATED FOR CONSULTING FEES		

REASON FOR CONSIDERATION: The City Council is requested to approve the hiring of Retired Annuitant Rosemary Hoerning as a City Engineering Consultant and to authorize the payment of her wages from consulting fees allocated from Lease Revenue Bonds.

BACKGROUND: On May 14, 2021, Director of Public Works/City Engineer Noel Castillo resigned from the City of Montclair after serving three years in the position. The loss of Mr. Castillo's familiarity with the local agencies and personnel related to public works projects and his expertise in relation to planned infrastructure projects created a dire need to fill his position because of the City's intention to issue \$47.78 million in Lease Revenue Bonds soon after his departure. After an extensive recruitment for Mr. Castillo's replacement, the City hired Monica Heredia as the new Director of Public Works/City Engineer. Although Ms. Heredia has a long career serving the public sector in a civil engineering capacity, her experience is limited in relation to agencies in San Bernardino County and other regional authorities interrelated to the City of Montclair. Additionally, Ms. Heredia has evaluated the intended infrastructure bond projects and has opined that the City will need additional experienced engineers to handle the massive workload that will be created.

Rosemary Hoerning began her career with the City of Ontario in 1990 as the Supervising Civil Engineer, Utilities Section, until she moved to the Long Beach Water Department serving as a Division Engineer from 1997 to 2001. In 2001, she began working for the City of Upland as the Deputy City Engineer, was promoted to the Deputy Public Works Director, Engineering in 2004, and then to Assistant Public Works Director, Utilities, in 2005. In 2008, she began work for the City of Redlands as its Director of Municipal Utilities and Public Works Engineering/City Engineer until she returned to the City of Upland in 2011 to become its Public Works Director/City Engineer. In 2019, Ms. Hoerning was appointed as the Interim City Manager for the City of Upland, then appointed as the City Manager in 2020, and retired as the City of Upland City Manager on April 21, 2021. Ms. Hoerning possesses a Bachelor of Science Degree in Civil Engineering from Cal Poly, Pomona and a Master's Degree in Public Administration from California State University, Northridge. She holds the following certifications: State of California Registered Engineer (1989); State of California Registered Land Surveyor (2012); and the Department of Public Health T2 & D2 Certifications.

Ms. Hoerning's deep level of experience, knowledge, and professionalism are necessary to assist City staff with the several special projects identified moving forward with the 2021A Issue of Lease Revenue Bonds including, but not limited to: developing the Parks Master Plan; park expansion and facilities improvements; the development of Reeder Ranch Park and County Park; the Public Parking Garage at the Village at Montclair; implementing projects in relation to Safe Routes to Schools and the Local Road Safety

and Systemic Safety Analysis Programs; design and construction of the Arrow Highway Streetscape Project; median and pavement rehabilitation for a multitude of streets throughout the City; the Monte Vista Avenue Road Widening Project; development of the San Antonio Creek Channel Trail; and alleyway improvements.

Ms. Hoerning's skills are critically needed immediately as the City initiates several of the public works and engineering projects planned with the revenue generated from the 2021A Issue of Lease Revenue Bonds. Her 30+ years of experience, depth of knowledge, and professional contacts with state and regional public agencies and private entity stakeholders are vital and essential to the success of the City's planned infrastructure projects. Ms. Hoerning will also provide valuable training to the appropriate employees within the organization as it relates the intricacies of state and local agency relations, engineering, and project management. Having Ms. Hoerning work in a temporary, part-time retired annuitant position as a City Engineering Consultant will provide her critical skills to the City in this time of need. She will work no more than 960 hours for the remainder of the current fiscal year.

Ms. Hoerning's hourly rate will not be less than the minimum or exceed the maximum for the comparable position, which is the Director of Public Works/City Engineer. The salary range for that position is \$12,735/month to \$15,480/month, or \$73.47/hour to \$89.31/hour. Ms. Hoerning will not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to this hourly rate of pay connected to this part-time, temporary special work retired annuitant appointment. Based upon Ms. Hoerning's previous experience as a Director of Public Works/City Engineer, her rate shall be set at \$89.31/hour as a retired annuitant. The nature of Ms. Hoerning's work is to assist the City with special projects funded by the 2021A Issue of Lease Revenue Bonds until such time that those projects have been completed or Ms. Hoerning's services are no longer needed.

FISCAL IMPACT: The fiscal impact associated with the hiring of Ms. Hoerning will be negligible as her wages will be paid from consulting fees already allocated by the City Council from Lease Revenue Bond Funds.

RECOMMENDATION: Staff recommends the City Council approve the hiring of Retired Annuitant Rosemary Hoerning as a City Engineering Consultant and authorize the payment of wages with Lease Revenue Bond funds allocated for consulting fees.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	MHA030
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE/MHA
ITEM NO.:	17	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER APPROVAL OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT PURSUANT TO SECTION 3416.1(F) OF THE HEALTH AND SAFETY CODE (SB 341) FOR FISCAL YEAR 2020-21		

REASON FOR CONSIDERATION: Senate Bill 341 became effective on January 1, 2014. The bill amended Section 34176 of the Health and Safety Code and added Section 34176.1. Health and Safety Code Section 34176 revised redevelopment law related to certain expenditure requirements of Low and Moderate Housing Funds of former redevelopment agencies. In general, Section 34176.1 limited future expenditures of administrative funds used for the monitoring and preservation of affordability covenants, directed that certain funds remaining in the Low and Moderate Income Housing Fund be directed to extremely low income households, and added certain audit and reporting requirements.

The report, labeled "SB 341 Compliance Report," is attached for consideration by the City Council and Montclair Housing Authority Commission pursuant to Health and Safety Code Section 34176.1 (f). This report indicates that the financial data applicable to the Montclair Housing Authority will be included in the City of Montclair's annual independent financial audit. That process is currently being completed and that report will be provided to the City Council and Montclair Housing Authority Commission upon its receipt from the independent audit firm of Van Lant & Fankhanel, LLC. The City Council and Montclair Housing Authority Commission are requested to consider approval of the SB 341 Compliance Report.

BACKGROUND: As the City Council and Montclair Housing Authority Commissioners will recall, the California Supreme Court's decision in *California Redevelopment Association, et. al. v. Matosantos* upheld AB X1 26, The Dissolution Act. The Dissolution Act caused the dissolution of all California redevelopment agencies. On January 12, 2012, the City of Montclair City Council elected to become and serve as the Successor Agency to the City's dissolved redevelopment agency. The City is performing its functions as the Successor Agency to the former Redevelopment Agency under the Dissolution Act to administer the enforceable obligations of the Agency and otherwise unwind the Agency's affairs, all subject to review and approval by the County Oversight Board.

On January 12, 2012, pursuant to Section 34176 of the Dissolution Act, the City Council selected the Montclair Housing Authority to assume all housing assets and functions of the former City of Montclair Redevelopment Agency. Therefore, on February 1, 2012, the Montclair Housing Authority became the "Housing Successor" of the former Redevelopment Agency pursuant to the Dissolution Act. The actions of the Housing Successor are not subject to the review and approval of the County Oversight Board.

As indicated, certain provisions of SB 341 require that the Housing Successor prepare a Compliance Report and have an audit completed. The SB 341 Compliance Report responds to the requirements of Section 34176.1 (f) of the Health and Safety Code. The

SB 341 Compliance Report also includes financial data for the Montclair Housing Corporation which operates the properties owned by the Montclair Housing Authority. Primarily, the Report indicates the following:

The Montclair Housing Authority received no revenue during Fiscal Year 2020–21. The Montclair Housing Corporation received \$10,041 of interest earnings and \$1,007,477 from rents.

The assets of the Montclair Housing Authority chiefly include real estate composed of the 99 residential units operated by the Montclair Housing Corporation and residual receipts loans.

For Fiscal Year 2020–21, the Montclair Housing Authority had no expenditures. The expenditures shown for the Montclair Housing Corporation include administrative costs by staff, management company costs that include charges for minor repairs and maintenance, major repairs and maintenance and costs for health permits. The excess of revenue for the year is accumulated so that long-term maintenance items can be accomplished in the future.

The report indicates that the carrying value of the housing units owned by the Montclair Housing Authority is \$7.15 million. Approximately \$2.6 million is owed to the Montclair Housing Authority from residual receipts loans to Augusta Homes (loans for rehabilitation of mobile home parks), Neighborhood Partnership Housing Services (loans to home owners for housing rehabilitation), and National Community Renaissance (loans for acquisition and construction of new affordable housing).

The Montclair Housing Authority currently exceeds its Section 33413 inclusionary housing requirements. The income of the Montclair Housing Authority is non-reoccurring. Without a permanent source of revenue, the Montclair Housing Authority will no longer be able to provide additional affordable housing units.

Within the last 10 years, the City of Montclair Redevelopment Agency Low and Moderate Income Housing Fund provided financing for 228 deed restricted affordable rental housing units. Thirty eight percent of the units were for senior housing.

FISCAL IMPACT: Approval of the Annual Report by the City Council and Montclair Housing Authority Commission will create no fiscal impact for the City or Montclair Housing Authority. With no permanent source of the funding, the Montclair Housing Authority has extremely limited resources for the purpose of providing low and moderate housing.

As indicated, the Audit Report will be supplied to the City Council and Montclair Housing Authority Commission upon receipt from Van Lant & Frankhanel, LLC which should occur prior to January 31, 2022.

RECOMMENDATION: Staff recommends that the City Council and Montclair Housing Authority Commissioners approve the Annual Report pursuant to Section 34176.1 (f) of the Health and Safety Code (SB 341) for Fiscal Year 2020–21.

Successor Housing Entity – Montclair Housing Authority

Health and Safety Code Section 34176.1 (f) and Section 33080.1 as well as Section 12463.3 of the Government Code shall not apply. Instead, the housing successor shall conduct, and shall provide to its governing body, an independent financial audit of the Low and Moderate Income Housing Asset Fund within six months after the end of each fiscal year, which may be included in the independent financial audit of the host jurisdiction. If the housing successor is a city or county, it shall also include in its report pursuant to Section 65400 of the Government Code and post on its Internet Web site all of the following information for the previous fiscal year. If the housing successor is not a city or county, it shall also provide to its governing body and post on its Internet Web site all of the following information for the previous fiscal year:

Response:

The Montclair Housing Authority's and Montclair Housing Corporation's financial information is part of the annual financial audit report prepared for the City of Montclair and therefore it meets the requirement by being included "in the independent financial audit of the host jurisdiction".

- (1) The amount deposited to the Low and Moderate Income Housing Asset Fund, distinguishing any amounts deposited for items listed on the Recognized Obligation Payment Schedule from other amounts deposited.

Response:

The operations of Low and Moderate Income Housing are separated and reported by two entities. The Montclair Housing Authority (Housing Authority) is the Successor Housing Entity, which under the redevelopment dissolution law took over housing assets from the City of Montclair Redevelopment Agency Low and Moderate Income Housing Funds upon its dissolution. Those housing assets included single and multifamily residential housing units which are operated and maintained by the Montclair Housing Corporation (Housing Corporation) which is a separate 501(c)(3) non-profit California Corporation. The rents and other income from the housing operations belong to the Housing Authority; however, they are granted to the Housing Corporation for use in covering expenses of operating the various housing units. Below is a summary of the deposits of both of these entities for fiscal year 2020-21:

	<u>Housing Authority</u>	<u>Housing Corporation</u>	<u>Total</u>
Deposits for fiscal year 2020-21	<u>\$ -</u>	<u>\$ 1,017,517.97</u>	<u>\$ 1,017,517.97</u>
Deposit detail:			
Grant from Housing Authority - Rental income	\$ -	\$ 1,007,477.44	\$ 1,007,477.44
Interest earnings	-	10,040.53	10,040.53
Contribution from other governments	-	-	-
	<u>\$ -</u>	<u>\$ 1,017,517.97</u>	<u>\$ 1,017,517.97</u>

None of the deposits above relate to any obligations listed on a Recognized Obligation Payment Schedules.

- (2) A statement of the balance in the fund as of the close of the fiscal year, distinguishing any amounts held for items listed on the Recognized Obligation Payment Schedule from other amounts.

Response:

Since this section does not define what "balance" is required, the fund balances present in the Low and Moderate Income Housing Asset Fund of the Montclair Housing Authority and the fund balance of the Montclair Housing Corporation are presented and detailed into their component amounts. Those balance and amounts are as follows as of June 30, 2021:

	Housing Authority	Housing Corporation	Total
Fund Balance	\$ 9,762,216.07	\$ 2,160,700.74	\$ 11,922,916.81
Components of Fund Balance:			
Nonspendable - Land and Real Estate	\$ 7,158,283.44	\$ -	\$ 7,158,283.44
Nonspendable - Loans Receivable	2,599,461.47	-	2,599,461.47
Restricted for Housing	4,471.16	2,160,700.74	2,165,171.90
	<u>\$ 9,762,216.07</u>	<u>\$ 2,160,700.74</u>	<u>\$ 11,922,916.81</u>

- (3) A description of expenditures from the fund by category, including, but not limited to, expenditures (A) for monitoring and preserving the long-term affordability of units subject to affordability restrictions or covenants entered into by the redevelopment agency or the housing successor and administering the activities described in paragraphs (2) and (3) of subdivision (a), (B) for homeless prevention and rapid rehousing services for the development of housing described in paragraph (2) of subdivision (a), and (C) for the development of housing pursuant to paragraph (3) of subdivision (a).

Response:

Total expenditures for fiscal year 2020-21 by category were as follows:

	Housing Authority	Housing Corporation	Total
Expenditures:			
Administrative costs	\$ -	\$ 317,395.88	\$ 317,395.88
Professional services	-	2,410.00	2,410.00
Management service company costs	-	509,887.09	509,887.09
Repairs and maintenance	-	92,810.07	92,810.07
Permits	-	932.00	932.00
	<u>\$ -</u>	<u>\$ 923,435.04</u>	<u>\$ 923,435.04</u>
Total	<u>\$ -</u>	<u>\$ 923,435.04</u>	<u>\$ 923,435.04</u>

Operations of the multifamily residential units owned by the Montclair Housing Authority (Successor Housing Entity) are done through the Montclair Housing Corporation a separate 501(c)(3) nonprofit corporation. As such, the Montclair Housing Authority has not directly incurred any expenditures for monitoring or administering affordability restrictions or covenants as these are done by the Montclair Housing Corporation as part of administering and preserving those properties. All properties owned by the Housing Authority have 55 year deed restrictions present for low and moderate income housing purposes.

- (4) As described in paragraph (1) of subdivision (a), the statutory value of real property owned by the housing successor, the value of loans and grants receivable, and the sum of these two amounts.

Response:

The statutory values of real property, loans and grants receivable at June 30, 2021 were as follows:

	Housing Authority
Real property	\$ 7,158,283.44
Loans receivable (net of allowance for uncollectible)	2,599,461.47
Total Real Property and Receivables	<u>\$ 9,757,744.91</u>

- (5) A description of any transfers made pursuant to paragraph (2) of subdivision (c) in the previous fiscal year and, if still unencumbered, in earlier fiscal years and a description of and status update on any project for which transferred funds have been or will be expended if that project has not yet been placed in service.

Response:

During Fiscal Year 2019-20 transfers of operating monies in the amount of \$160,000 occurred from the Housing Authority to the Housing Corporation. These monies were to provide resources to further maintain the housing units administered by the Housing Corporation and to assist in providing housing for extremely low-income households. No additional transfers of monies have been done by the Montclair Housing Authority or from the Montclair Housing Corporation from June 30, 2020 through June 30, 2021.

- (6) A description of any project for which the housing successor receives or holds property tax revenue pursuant to the Recognized Obligation Payment Schedule and the status of that project.

Response:

The Montclair Housing Authority and the Montclair Housing Corporation receive no property tax revenues. Neither of these entities has received nor currently holds any tax revenues pursuant to a Recognized Obligation Payment Schedule.

- (7) For interests in real property acquired by the former redevelopment agency prior to February 1, 2012, a status update on compliance with Section 33334.16. For interests in real property acquired on or after February 1, 2012, a status update on the project.

Response:

Section 33334.16 of the Health and Safety Code generally requires that for each interest in real property acquired by a redevelopment agency with Low to Moderate Income Housing Fund monies, a redevelopment agency must begin the development or rehabilitation of the property within five years from the date of acquisition. In the case of the former City of Montclair Redevelopment Agency, all properties acquired by the former Redevelopment Agency have been (or are in process of being) rehabilitated or sold for new housing development. The narrative below provides an update on the status of the units and/or property owned by the former City of Montclair Redevelopment Agency upon redevelopment agency dissolution in February 2012.

The former City of Montclair Redevelopment Agency was the owner of 98 units of affordable housing. The housing units were purchased and rehabilitated by the former Redevelopment Agency with Low-and Moderate-Income Housing Funds. The 98 units contain 55 year deed restrictions for affordability; approximately 80 percent of the units are deed restricted for very low income families; and over 300 people currently reside in these units.

On April 4, 2011, the Redevelopment Agency Board of Directors and the Montclair Housing Corporation Board of Directors approved the sale of 98 housing units to the Montclair Housing Corporation with the approval of Redevelopment Agency Special Counsel. The properties were sold by the Redevelopment Agency to the Montclair Housing Corporation for approximately \$12 million with the provision that all loan payments would be forgiven as long as the properties remained affordable housing subject to 55-year affordability covenants. The Montclair Housing Corporation was established in June 1994 to maintain and manage certain rental properties that the former Redevelopment Agency purchased and rehabilitated for the purpose of providing affordable housing with Low- and Moderate-Income Housing Funds to meet Health and Safety Code Inclusionary requirements. The City Council acts as the Board of Directors for the Montclair Housing Corporation.

While auditing the former City of Montclair Redevelopment Agency, the State Controller never questioned the validity of the asset transfer to the Montclair Housing Corporation. However, upon issuance of its draft Report in November 2012, the Controller's Office indicated that the housing units transferred to the Montclair Corporation should be returned to the Successor Agency. Successor Agency staff responded to the State Controller's conclusion indicating that the 98 units were existing units of affordable housing containing over

300 tenants. In addition, all the units contain 55 year affordability covenants. The State Controller's staff verbally communicated to Successor Agency staff saying that the units could be retained by the Montclair Housing Corporation upon adoption of a Resolution affirming such action by the Oversight Board. The Oversight Board approved Resolution No. 13-02 approving the transfer of the housing units to the Montclair Housing Corporation on January 23, 2013. The Final Report issued by the State Controller's Office dated March 6, 2013 indicated the Oversight Board had authorized the property transfer and no further action was necessary.

After receipt and review of Resolution No. 13-02 by the Department of Finance (DOF) a letter was received from DOF on May 15, 2013 disallowing the transfer of the 98 housing units to the Montclair Housing Corporation. The action by DOF indicated no "Meet and Confer" on this action was authorized. The letter from DOF did remand the action back to the Oversight Board for consideration. Successor Agency staff verbally communicated with DOF where it was indicated that the housing assets in question should be placed on the Long Range Property Management Plan. It should be noted that DOF did not question the placement of these 98 housing units as assets on the Housing Asset Transfer list submitted by the Successor Agency and Oversight Board in July 2012. As directed by DOF, staff included the housing units in the first draft of the Long Range Property Management Plan.

After conference with legal counsel, Successor Agency staff submitted Resolution No. 13-10 to the Oversight Board for consideration. This resolution directed the Successor Agency to transfer the 98 units of rental housing to the Montclair Housing Authority (Successor Housing Agency) as housing assets. On September 11, 2013, the Oversight Board adopted Resolution No. 13-10 directing the Successor Agency to transfer the 98 low--and moderate-income housing units to the Montclair Housing Authority. On September 18, 2013, DOF Analyst Hanzhao Meng pulled Resolution No. 13-10 for review.

The Successor Agency to the City of Montclair Redevelopment Agency was finally allowed to delete the 98 units of low-to moderate-income housing (**Housing Assets**) in the Long- Range Property Management Plan that were held by the Montclair Housing Corporation. Per direction from DOF, pursuant to DOF Determination on OB Resolution No. 13-10 dated December 13, 2013, the transfer of the 98 units to the Montclair Housing Authority was approved.

Of the 98 units, the only unit requiring rehabilitation at the time of dissolution was the property at 5444 Palo Verde Street purchased prior to dissolution in 2011. Since its acquisition, this property has undergone extensive rehabilitation to clear trees and overgrown vegetation and to correct a variety of building code violations. The remaining items to be performed on the unit included replacement of broken windows and painting the exterior of the house. The house is currently rented to an income qualifying family.

The Montclair Housing Corporation continues to rent these 98 units along with the newly purchased property to income qualifying families. The majority of units are deed restricted for rental to very low-income families.

The other property owned by the former Redevelopment Agency upon dissolution was located at 4113 Kingsley Street. The .47-acre property was acquired by the former Redevelopment Agency on January 20, 2009. The purchase price for the property was \$330,000. The property was acquired with Low to Moderate Income Housing Funds. At the time the property was acquired, staff held preliminary discussions with National CORE to determine its interest in considering the site for special needs housing. Development of a Special Needs Housing project was of interest to National CORE. National CORE developed similar projects in the past and has partnered with nonprofit social service providers regarding tenancy and social service needs. The proposed location for the National CORE Special Needs project lies directly east of Vista Del Cielo on the southwest corner of Kingsley Street and Pradera Avenue. This site also serves as an entry corner for the Montclair Meadows Foundation Area and the San Antonio Vista Apartments. On September 8, 2009, the Redevelopment Agency Board of Directors approved an Exclusive Right to Negotiate Agreement between the City of Montclair Redevelopment Agency and National CORE regarding the 4113 Kingsley Street site. Through the Exclusive Right to Negotiate Agreement, the Redevelopment Agency Low and Moderate Income Housing Fund provided National CORE with a predevelopment loan of approximately \$252,000. These funds were used to develop building plans for the property and to gain City entitlements. The project was entitled by the Planning Commission on March 14, 2011.

An Option Agreement regarding purchase of 4113 Kingsley Street was approved by the Redevelopment Agency Board of Directors and National CORE on October 19, 2009. The Option Agreement provided National CORE with the ability to apply for United States Department of Housing and Urban Development (HUD) Section 811 funding to finance the development of affordable housing for developmentally disabled persons. The Option Agreement also committed that the Redevelopment Agency Board of Directors would consider providing National CORE with a residual receipts loan of at least \$1.6 million. National CORE received a commitment for funding from the Section 811 program in 2010. However, National CORE still found itself in need of additional funding for the project and sought to apply for the California 9 Percent Low-Income Housing Tax Credit (LIHTC) program. Therefore, on December 30, 2010, the Option Agreement with National CORE was extended until December 30, 2012.

National CORE was successful at receiving 9 Percent LIHTC and with the HUD Section 811 funding, National CORE was ready to finance the 18-unit Special Needs Housing Project for persons with developmental disabilities for several months. National CORE wrote a letter to the Successor Agency seeking to exercise the option for acquisition of the property. In addition, without an open escrow for the site, National CORE would be in danger of losing its commitment for HUD financing.

A public hearing to consider the Disposition and Development Agreement (DDA) with National CORE regarding the Special Needs Housing Project at 4113 Kingsley Street was set to be considered by the Redevelopment Agency Board of Directors and City Council on July 5, 2011. Unfortunately, Governor Brown signed the redevelopment dissolution legislation, AB 1X 26, on June 27, 2011. Therefore, the Redevelopment Agency Board of Directors and City Council were not able to approve the DDA with National CORE and the 4113 Kingsley Street property returned to its state as an unimproved asset of the redevelopment agency.

With the official dissolution of redevelopment agencies on February 1, 2012, the City of Montclair formed the Montclair Housing Authority to assume responsibility for former redevelopment agency housing assets. The City became the successor agency for former redevelopment agency's nonhousing assets. Successor Agency Special Counsel opined that housing assets should be transferred to the housing successor agency by matter of law so a grant deed was not recorded to commemorate the transfer.

With the adoption of AB 1484 on June 27, 2012, the housing assets of each former redevelopment agency were to be listed on a Housing Asset Transfer form and submitted to the Department of Finance (DOF) for approval. The submittal of the Housing Asset Transfer form to DOF had to be completed by August 1, 2012. The Housing Asset Transfer form for the former City of Montclair Redevelopment Agency included the property located at 4113 Kingsley Street. The Housing Asset Transfer form listed this property as a site to be used for an affordable Special Needs Housing project having a valid Option to Purchase Agreement by National CORE. In addition, the Oversight Board approved the Housing Asset Transfer form on July 25, 2012 and adopted Resolution No. 12-11 approving the transfer of housing assets to the Montclair Housing Authority.

On August 25, 2012, the DOF made the determination that the 4113 Kingsley Street property was not a housing asset. Successor Agency staff submitted a Request to "Meet and Confer" regarding this matter on September 13, 2012. The "Meet and Confer" with DOF was conducted on November 21, 2012. Representatives from National CORE and the Successor Agency staff presented the background regarding the property and discussed the lawsuit that would ensue if DOF maintained its position that 4113 Kingsley Street was not a housing asset. Finally, on December 21, 2012 DOF issued a letter reversing the determination that 4113 Kingsley Street was a nonhousing asset.

The Successor Agency Board of Directors approved the transfer of the 4113 Kingsley Street property to the Montclair Housing Authority with a grant deed on January 22, 2013. The Montclair Housing Authority also approved a Purchase and Sale Agreement to National CORE on January 22, 2013 so that National CORE's grant of HUD 811 financing could be preserved. The Montclair Housing Authority approved a Disposition and Development Agreement with National CORE on February 2, 2013, more fully detailing the terms of the purchase agreement between the Montclair Housing Authority and National CORE. The Montclair Housing Authority was not able to provide the \$1.6 million in assistance previously committed by the Redevelopment

Agency. National CORE took possession of the property in early 2013. The 18-unit project was completed and occupied by spring of 2014. National CORE named the Montclair Special Needs Housing Project "San Emi." Subsequent to financing the San Emi Special Needs Housing Project, HUD discontinued the HUD 811 program. San Emi may be the last HUD project constructed with this funding source.

Adults residing in the San Emi Special Needs Housing project need to have the capacity and ability for independent living. However, these residents have the need for special services. Therefore, the Special Needs Housing project is operated slightly differently than the other National CORE Housing Projects (the San Marino Senior Apartments, the San Antonio Vista Apartment Project, or the Vista Del Cielo Apartment Project). The difference in operation is reflected in social service delivery. While all the other National CORE projects have community, recreational, or educational programs, the San Emi Special Needs Housing project has a social service provider that monitors and follows up on the needs of the resident population.

The nonprofit social service provider for the San Emi Project is United Cerebral Palsy of Los Angeles. United Cerebral Palsy of Los Angeles is experienced in operating special needs housing for the developmentally disabled. This organization currently services 11 independent living apartments and 25 community based homes to help address affordable and accessible housing in Los Angeles, Orange, and Santa Barbara counties. The Montclair Special Needs Housing project is the first project served by United Cerebral Palsy of Los Angeles in San Bernardino County.

- (8) A description of any outstanding obligations pursuant to Section 33413 that remained to transfer to the housing successor on February 1, 2012, of the housing successor's progress in meeting those obligations, and of the housing successor's plans to meet unmet obligations. In addition, the housing successor shall include in the report posted on its Internet Web site the implementation plans of the former redevelopment agency.

Response:

The only obligations which remained to be transferred to the housing successor as of February 1, 2012 pursuant to Section 33413 were those units and property detailed in Question 7 above. As stated, all units and property have been transferred and land at 4113 Kingsley Street has been developed for affordable housing. All units transferred or developed are used to satisfy Section 33413 requirements.

As of February 1, 2012 all of the Redevelopment Agency's 33413 objectives were satisfied and an excess of 56 affordable units were produced.

With the completion of the San Emi Special Needs Housing Project in 2014, the Housing Successor Entity (Housing Authority) currently has 73 units of deed restricted affordable housing in excess of current Section 33413 production requirements. At June 30, 2019, the Housing Authority had \$164,025 in cash.

Implementation Plans shall be posted on the Internet Web site.

- (9) The information required by subparagraph (B) of paragraph (3) of subdivision (a).

Response:

The Housing Authority interprets this requirement as follows:

(B) If the housing successor fails to comply with the extremely low income requirement in any five-year report, then the housing successor shall ensure that at least 50 percent of these remaining funds expended in each fiscal year following the latest fiscal year following the report are expended for the development of rental housing affordable to, and occupied by, households earning 30 percent or less of the area median income until the housing successor demonstrates compliance with the extremely low income requirement in an annual report described in subdivision (f).

Section 34176.1 of the Health and Safety Code became effective January 1, 2014. The Successor Housing Authority, at June 30, 2019, has \$164,025 in cash. This source of income is non-reoccurring. The only additional source of funding for the Montclair Housing Authority is made available through the repayment of

residual receipts loans. Residual receipts loans were made to National CORE and Augusta Homes. Residual receipts income is only derived when income exceeds expenses from maintenance, operations, and payment to creditors in a first position. However, residual receipts loans do not constitute a steady income stream and in the past several years, the recipients of the residual receipts loans have been unable to make payments on the loans because operating expenses have just met or exceeded revenue. Therefore, as indicated in Question 8 above, future project revenue to advance new affordable housing projects will not be forthcoming

To comply with requirements to provide housing for extremely low income, staff will recommend that the Housing Authority Board of Directors transfer the most of the cash balance of in the Housing Authority fund to the Housing Corporation to secure deed restrictions for extremely low income persons for one-or two-units for this income category.

The San Emi Special Needs Housing Project was completed in the 2013-14 fiscal year, 17 units of affordable deed restricted housing were created. Eight of the 17 units (47 percent) are provided to persons or families earning 30 percent or less of the area median income. Presuming the provisions of Section 34176.1 (a)(3)(A) begin on January 1, 2014, the Montclair Housing Authority complies with this Section.

- (10) The percentage of units of deed-restricted rental housing restricted to seniors and assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the previous 10 years in relation to the aggregate number of units of deed-restricted rental housing assisted individually or jointly by the housing successor, its former redevelopment agency, and its host jurisdiction within the same time period.

Response:

The following affordable deed restricted rental housing units have been assisted by the City of Montclair Redevelopment Agency or Montclair Housing Authority within the last 10 years:

San Antonio Vista Family Apartments-74 units
San Marino Senior Apartments-84 units
Vista del Cielo Family Apartments-49 units
Montclair Housing Corporation-2 units
San Emi Special Needs Apartments-17 units

The City of Montclair Redevelopment Agency or the Montclair Housing Authority assisted 228 affordable deed restricted rental housing projects in the last 10 years. Eighty four of the 228 rental units or approximately 38 percent of the units were, therefore, deed restricted for use by qualifying senior renters. The percentage of restricted senior units falls below 50 percent of the deed restricted units.

- (11) The amount of any excess surplus, the amount of time that the successor agency has had excess surplus, and the housing successor's plan for eliminating the excess surplus.

Response:

When the City of Montclair Redevelopment Agency was eliminated there was no excess surplus. Because all available amounts, since that point in time, have been distributed to the taxing entities through the Low and Moderate Housing Due Diligence Review and subsequent payment by the Successor Agency, there presently exists no carryover of excess surplus. Because the Montclair Housing Authority (Successor Housing Entity) receives no property taxes, excess surplus provisions do not apply.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	MHA050
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	18	PREPARER:	C. CALDWELL
SUBJECT:	CONSIDER REVIEW AND ACCEPTANCE OF THE MONTCLAIR HOUSING AUTHORITY ANNUAL REPORT FOR FISCAL YEAR 2020-21		

REASON FOR CONSIDERATION: The Montclair Housing Authority (MHA) Commission is required to conduct an annual meeting in December to report the Authority's activities for the preceding fiscal year.

A copy of the MHA Annual Report for Fiscal Year 2020-21 is attached for the MHA Commissioners' consideration.

BACKGROUND: The MHA was created by the City Council on July 18, 2011. The City Council designated itself Commissioners of the MHA and designated certain City officials to serve as officers of the MHA. The City Manager is the Executive Director of the MHA.

The MHA financial statements for the Fiscal Year ending June 30, 2021, are included in the MHA Annual Report for Fiscal Year 2020-21. Total assets for MHA are \$9,762,216. The balance includes the value of the real property owned by the MHA and Residual Loan Receivables. A residual receipt is the repayment of monies borrowed from the former Montclair Redevelopment Agency to carry out a variety of housing programs.

FISCAL IMPACT: There would be no cost associated with the MHA Commissioners' review and acceptance of the Annual Report.

RECOMMENDATION: Staff recommends the Montclair Housing Authority Commissioners review and accept the Montclair Housing Authority Annual Report for Fiscal Year 2020-21.

**Montclair Housing Authority
Annual Report
Fiscal Year 2020-21**

Montclair Housing Authority

Javier John Dutrey, Chair

Bill Ruh, Vice Chair

Tenice Johnson, Commissioner

Corysa Martinez, Commissioner

Benjamin Lopez, Commissioner

Officers

Edward C. Starr, Executive Director

Janet L. Kulbeck, Finance Officer

Andrea M. Myrick, Housing Authority Secretary

In accordance with Section 34328 of the Health and Safety Code of the State of California, below are financial statements for the Montclair Housing Authority (Successor Housing Entity for the City of Montclair Redevelopment Agency) for the Fiscal Year Ended June 30, 2021:

Montclair Housing Authority
Balance Sheet
June 30, 2021

Assets	
Cash in Bank	\$ 4,471
Residual Receipt Loan Receivable	2,599,461
Land and Multifamily Housings Units	<u>7,158,283</u>
 Total Assets	 <u><u>\$ 9,762,215</u></u>
Fund Balance	
<u>Liabilities</u>	
Accounts Payable	<u>\$ -</u>
 <u>Fund Balance</u>	
Nonspendable - Unavailable	\$ 2,599,461
Restricted for Housing	<u>7,162,755</u>
Total Fund Balance	<u>\$ 9,762,216</u>
 Total Liabilities and Fund Balance	 <u><u>\$ 9,762,216</u></u>

Montclair Housing Authority
Statement of Revenues, Expenditures
and Changes in Fund Balance
For the Year Ended June 30, 2021

<u>Revenues</u>	
Interest	\$ -
Contribution from Other Governments	<u>-</u>
Total Revenues	<u>-</u>
 <u>Expenditures</u>	
Transfers Out - Housing Operations/Maintenance	-
Total Expenditures	<u>-</u>
Excess of Revenues Over (Under) Expenditures	-
 <u>Fund Balances</u>	
Beginning of Fiscal Year	<u>\$ 9,762,216</u>
End of Fiscal Year	<u><u>\$ 9,762,216</u></u>



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	SEW080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	1	PREPARER:	S. GUTIERREZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-04-I-106 (CASE NO. 2021-06), AN IRREVOCABLE ANNEXATION AGREEMENT WITH JOSE A. PALMA FOR 4168 HOWARD STREET, MONTCLAIR, CA 91763 (APN 1012-241-04-0-000)		

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

BACKGROUND: Proposed Irrevocable Annexation Agreement No. 21-04-I-106 would allow a connection to the sanitary sewer system owned and operated by the City of Montclair for a 0.19-acre residential site within the City's Sphere of Influence.

The owner, Jose A. Palma, desires to connect the existing 744 square-foot single-family house and an existing detached one-car garage (proposed to be converted to an accessory dwelling unit) to the City of Montclair's existing sanitary sewer line. The aforementioned structures currently situated on the property were constructed in 1965. A City-owned 8-inch diameter sewer line is present and available in Howard Street adjacent to the property's frontage (see Exhibit A).

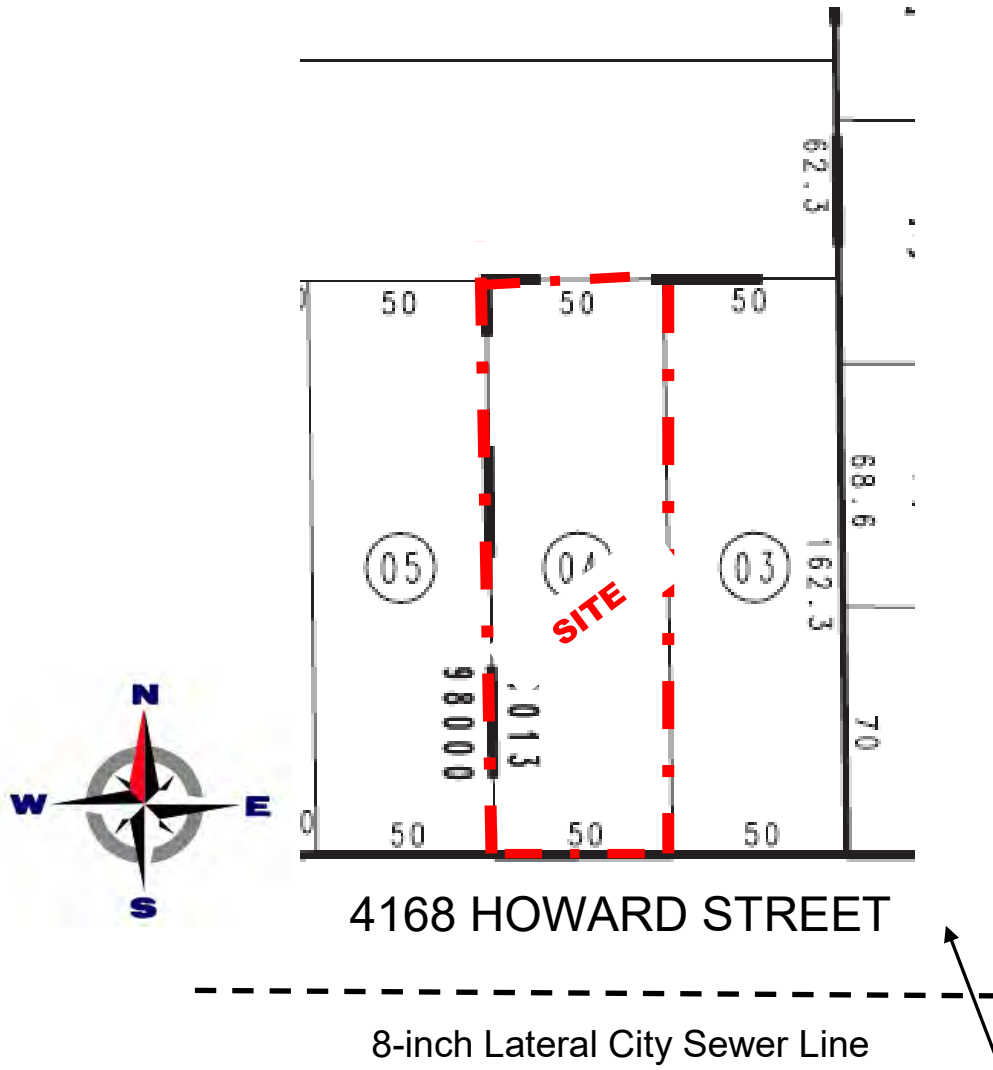
The proposed sewer connection request is consistent with the City's policies and requirements. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date. If approved by the City Council, staff will forward Agreement No. 21-04-I-106 to the Local Agency 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. 21-04-I-106, an Irrevocable Annexation Agreement with a Jose A. Palma for the property at 4168 Howard, Montclair, CA 91763 (APN 1012-241-04-0-000).

EXHIBIT A

IAA 21-04-I-106 (CASE 2021-06)



Recording Requested by:

Silvia Gutierrez
City of Montclair

When Recorded Mail To:

Silvia Gutiérrez
Associate Planner
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. 21-04-I-106
AN IRREVOCABLE ANNEXATION AGREEMENT
WITH THE CITY OF MONTCLAIR
AND
JOSE A. PALMA
FOR
4168 HOWARD STREET
MONTCLAIR, CA 91763
(APN 1012-241-04-0-000)**

AGREEMENT NO. 21-04-I-106

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

JOSE A. PALMA
4168 HOWARD STREET MONTCLAIR, CA 91763
(APN 1012-241-04-0-000)

This agreement is entered into this ____ day of _____, 2021, between Jose A. Palma, 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 4168 Howard, Montclair, CA 91763 (APN 1012-241-04-0-000), shown as Exhibit "A" attached, and is further described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MONTCLAIR, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: THE EASTERLY 100 FEET OF THE SOUTHERLY 162.3 FEET OF LOT 8 OF BLOCK "B" OF POMONA GRANDE TRACT, OF THE SAN ANTONIO TRACT, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK .12:PAGES 11 AND 12 OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY. EXCEPT THE EASTERLY 50 FEET THEREOF.

WHEREAS, the subject property is approximately 0.19-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 developed land; and

WHEREAS, The owner desires to connect the existing 744 square-foot single-family house and a proposed conversion of the existing detached one-car garage to an accessory dwelling unit to the City of Montclair's existing sanitary sewer line. The aforementioned structures currently situated on the property were constructed in 1965.

WHEREAS, the Owner desires to connect the single family home and future ADU to the sanitary sewer system in the Howard Street 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 parties do agree as follows:

1. Owner does 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 does 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 Howard Street, 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 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

4168 HOWARD STREET

William A. Ruh, Mayor Pro Tem

Jose A. Palma, Owner

Date: _____

Date: _____

ATTEST:

Andrea M. Myrick, City Clerk

Date: _____

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	TRN257
SECTION:	CONSENT - AGREEMENTS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	E. STARR
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-66 WITH GREYHOUND LINES, INC. FOR SHARED USE OF A SINGLE BUS BAY FOR DAILY COMMERCIAL BUS PASSENGER SERVICE AND GROUND SPACE FOR AN EMPLOYEE-OPERATED TICKET VENDING AND CUSTOMER SERVICE KIOSK AT THE MONTCLAIR TRANSCENTER		

REASON FOR CONSIDERATION: The City of Montclair, the California Department of Transportation (Caltrans), and the San Bernardino County Transportation Authority (SBCTA) own and operate the Montclair Transcenter. The City functions as a landlord for Transcenter operations. Greyhound Lines, Inc. has requested to locate its commercial bus passenger service at the Transcenter. As Landlord for the Transcenter operations, the City Council shall consider agreements related to operational services.

At its November 1, 2021 meeting, the City Council continued consideration of proposed Agreement No. 21-66 to November 15, 2021 to allow time for staff to continue negotiations with Greyhound and amend the contract related to adjustments in daily commercial passenger service.

At the November 15, 2021 meeting, Agreement No. 21-66 was continued to the December 20, 2021, regularly scheduled City Council meeting after Council Member Lopez provided oral commentary on crime statistics data he stated had been obtained from the City of Claremont Police Department. The data, as interpreted by Council Member Lopez, reportedly indicated that the Greyhound Lines Depot in Claremont suffered from an exceptionally high crime rate. According to Council Member Lopez, he was in possession of *“a seven-page report of over two, three-hundred phone calls just at that location where the current Greyhound site is located....”* Council Member Lopez further stated that the report demonstrated a broad range of crime categories including *“personal disturbance, stolen vehicles, suspicious circumstances, suspicious subjects, prostitution, welfare checks, 9-1-1 calls, GTA—grand theft auto, car break-ins, car thefts,...more prostitution, more welfare checks, more medical treatment for drugs....”* Council Member Lopez stated that after he [Council Member Lopez] responded to a question from a Claremont Police Department Lieutenant as to why he was seeking crime statistics data related to the Claremont Greyhound depot, the Claremont Police Department Lieutenant *“chuckled”* and said, *“Good luck, have fun, get them off, out of our hands.”* Council Member Lopez further stated that, based on the crime activity he spoke of, he would vote against Agreement No. 21-66.

The crime statistics data had not been presented to City staff or other members of the City Council prior to the November 15, 2021, City Council meeting and, therefore, the data (i) had not been corroborated prior to the meeting; (ii) could not, at that time, be considered as part of the agenda report record because the crime statistics data was not received by City staff or the City Council in advance of the November 15, 2021, meeting; and, (iii) because the crime statistics data was not received in advance of the November 15, 2021 meeting, City Council Members could not consider it as an actionable report.

Mayor Dutrey asked Council Member Lopez to provide a copy of the crime statistics report he possessed to City staff for evaluation. Council Member Lopez stated he would give a copy of the report to the City Clerk for dissemination to Council Members. The crime statistics report was not provided to the City until the evening of December 14, 2021; therefore, subsequent to the November 15, 2021, City Council meeting, the Montclair Public Safety Director/Chief of Police communicated with the Claremont Chief of Police to (i) obtain a copy of the crime statistics report commented on by Council Member Lopez; (ii) obtain clarification on the crime statistics data; and (iii) discuss other matters relevant to the City Council's consideration of Agreement No. 21-66. An oral presentation will be provided at the December 20, 2021, meeting of the City Council regarding crime statistics data at or near the Greyhound Lines Depot in Claremont.

Prior to the November 15, 2021, City Council meeting, City staff was not aware of any definitive data, statistics or evidence that would have substantially supported Council Member Lopez' commentary on this matter at the November 15, 2021, meeting.

BACKGROUND: In February 2021, Greyhound Lines, Inc. initiated discussions with the City, Caltrans, and Omnitrans regarding shared use of a single bus bay at the Transcenter for daily commercial bus passenger services and ground space for an employee-operated ticket vending and customer service kiosk. Caltrans and SBCTA requested that the City serve as the lead agency, develop the license agreement, and oversee the project as operational site manager.

License Agreement No. 21-66 outlines Greyhound's use of the Transcenter to operate daily commercial bus passenger service. Exhibits A, B, and C to Agreement No. 21-66 illustrate the areas to be used by Greyhound and provide images and dimensions of the ticket vending and customer service kiosk. Exhibit D provides the schedule of Greyhound's daily commercial bus passenger services. Greyhound passengers will have access to and from the Transcenter's common areas, including benches, restrooms, covered canopy areas, and parking.

Key provisions of Agreement No. 21-66 include the following:

1. **Term.** The License Term is for a five year period (March 1, 2022 thru February 28, 2027).
2. **Option to Extend.** The License Term may be extended for up to two additional Terms of five years each.
3. **Rent.** Rent for the Term of the Initial License shall be \$1,800 monthly, payable in advance to the City before the first day of each calendar month.

The monthly rent is based upon the proposed eleven trips conducted out of the Transcenter on a daily basis, including drop offs and pick-ups (the "Daily Trip Rate"), as indicated in Exhibit D. Any increase in the Daily Trip Rate requires City approval, in consultation with Omnitrans, and shall result in a ten percent increase in the month Rent for each additional daily trip added to the Daily Trip Rate. There shall be no reduction to the month Rent for any decrease to the Daily Trip Rate.

4. **Rent Adjustment.** Rent for each month of the term of each extension option shall be increased by the greater of (i) ten percent, or (ii) the cumulative Annual Average of the *Consumer Price Index for the Riverside-San Bernardino-Ontario Area* for the five-year Term preceding each five-year option exercised.

5. **Facilities Improvement Contribution.** Greyhound agrees to make a one-time contribution of \$25,000 toward the purchase and installation of a self-cleaning restroom facility for use by the public using the Transcenter's common areas.
6. **Use of Premises.** Greyhound will use the Transcenter solely for business operations and related activities and must provide to the City and Omnitrans a monthly schedule of daily commercial bus services for coordination of use of the shared bus bay (a copy of which is attached as Exhibit D).
7. **Utilities.** Greyhound shall provide and pay for all utility services related to its operations at the Transcenter.
8. **Assignment and Subletting.** Greyhound cannot assign or sublease any part of the premises; however, Greyhound may transfer the license to an entity that acquires ninety percent or more of its assets.
9. **Alterations, Improvements, and Additions.** Greyhound cannot install signage or make any alterations, improvements, or additions in, on, or about the Premises, including installation of an employee-operated ticket vending/customer service kiosk without the City's consent and appropriate permits. Greyhound must remove signage, alterations, improvements, personal property, or additions made to the Premises within thirty days of expiration of the license's expiration. Any personal property, trade fixtures, signs, ticket vending kiosks, alterations, improvements, or additions not removed by Greyhound shall become the property of the City and the City may assess Greyhound a reasonable removal, repair and disposal fee.
10. **Taxes.** Greyhound shall pay all taxes, if any, assessed against and levied upon its trade fixtures and other personal property located at the Transcenter.
11. **Insurance.** At its sole cost and expense, Greyhound shall maintain comprehensive general liability insurance including contractual liability as respects the license, providing a combined single limit of liability of not less than \$3 million per occurrence on the Premises. Greyhound shall annually provide the City with a certificate of insurance evidencing coverage and naming the City, Caltrans, and SBCTA as additional insured. Greyhound may self-insure its insurance liabilities and provide a certificate evidencing such coverage.
12. **Indemnity.** Each party agrees to defend, indemnify, and hold the other party harmless from any claims, demands, costs, and expenses, including reasonable attorney's fees arising from indemnifying a party's wrongful act or negligence on the premises.
13. **Public Purpose.** The Transcenter is a public property providing transit services to the public, subject to mandates outside the control or authority of the City and Greyhound that may affect physical or operational features of the Transcenter. Therefore, the parties to this agreement cannot and shall not be held liable for legislative mandates that affect the public purpose of the Transcenter. The City shall, if practicable or if not prohibited by legal limitations or prohibitions, provide Greyhound with advance notice of no less than ninety days of the date of any taking that affects the premises and operations of Greyhound. At its sole discretion, the City shall terminate the license as of the date the premises is no longer available to

Greyhound for its business purposes. The City, Caltrans, and SBCTA shall have no liability whatsoever for removal of, or loss or damage to, trade fixtures or personal property of Greyhound, nor for any loss of business, revenue, or profitable gains or earnings. Greyhound may relocate to a tenantable location at the Transcenter, if available.

14. **Defaults.** The following constitute default by Greyhound:
 - a. Failure to make any payment of rent that continues for twenty days after receiving notice of the late payment.
 - b. Failure to observe or perform any of the covenants, conditions, or provisions of the license, where the failure continues for thirty days after receiving notice. If more than thirty days are required to cure the default, the City shall not deem Greyhound in default provided Greyhound commences such a cure within thirty days and diligently completes the cure.
 - c. Greyhound's filing of a petition to be adjudged as bankrupt or the judicial declaration of Greyhound as bankrupt.
 - d. Appointment of a trustee or receiver to take possession of substantially all of Greyhound's assets at the premises, or of Greyhound's interest in the license, if possession is not restored within thirty days.
 - e. Attachment, execution, or other judicial seizure of substantially all of Greyhound's assets located at the premises or of Greyhound's interest in the license if possession is not discharged within thirty days.
15. **Remedies upon Default.** In the event of default by Greyhound, the City may, after giving notice, remove Greyhound's property, take and hold possession of the premises, expel Greyhound, and pursue remedies available under California law.
16. **Holding Over.** If Greyhound remains in possession of the Premises after the expiration of the license, Greyhound shall occupy the premises as a tenant on a month-to-month basis, subject to all license conditions.
17. **Environmental Matters.** Greyhound shall comply with all environmental laws and bear liability for remediating, removing, or abating any environmental or hazardous materials or conditions Greyhound may bring to the premises.
18. **Miscellaneous.**
 - a. *Signs.* Before erecting or posting any sign, Greyhound must submit a sign program to the City for approval by the Community Development Department and receive the necessary permits and approvals.
 - b. *Ticket Vending/Customer Service Kiosk.* Prior to erecting or installing any ticket vending and customer service kiosks, Greyhound shall submit a site plan for approval by the Community Development Department and receive the necessary permits and approvals.

- c. *Attorney's Fees.* If any party named in License Agreement No. 21-66 brings an action to enforce terms of License Agreement No. 21-66, the prevailing party shall be entitled to reasonable attorney's fees.

FISCAL IMPACT: Greyhound will pay the City \$1,800 in monthly rent (\$21,600 annually, or \$108,000 over the full five-year term), payable in advance of each calendar month of the initial five-year term of the License Agreement.

Upon notice by Greyhound of its intent to exercise each of two five-year extension options, rent for each extension option's term shall automatically increase subject to the terms of the lease agreement. Funds will be deposited in the City's General Fund and used for Transcenter maintenance.

1. For the first five-year extension option, monthly rent shall increase to no less than \$1,980/\$23,760 annually/\$118,800 over the first optional five-year term extension.
2. For the second five-year extension option, monthly rent shall increase to no less than \$2,178/\$26,136 annually/\$130,680 over the second optional five-year term extension.

As a condition of approval of the License Agreement, Greyhound agrees to make a one-time contribution of \$25,000 toward the City's acquisition and installation of a self-cleaning restroom facility for use and enjoyment by Tenant and Landlord's agents, representatives, operators, invitees, customers, and the public.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-66 with Greyhound Lines, Inc. for shared use of a single bus bay for daily commercial bus passenger service and ground space for an employee-operated ticket vending and customer service kiosk at the Montclair Transcenter.

LICENSE AGREEMENT

LANDLORD:

City of Montclair
 P.O. Box 2308
 5111 Benito Street
 Montclair, CA 91763-2808

TENANT:

Greyhound Lines, Inc.
 a Delaware corporation
 350 N. St. Paul Street
 Dallas, Texas 75266-0362
 Attn.: Legal Department
 Copy to: Real Estate Department

1. **DATE.** This License Agreement ("License") is made to be effective as of March 1, 2022.
2. **PREMISES.** The City of Montclair, a California Municipal Corporation (the "Landlord"), together with the California Department of Transportation and San Bernardino County Transportation Authority (the "Parties"), own the real property commonly known as the Montclair Transcenter (the "Transcenter"), and the Landlord, on behalf of the Parties, operates and maintains the Transcenter as a multimodal transit hub. Greyhound Lines, Inc., a Delaware Corporation (the "Tenant"), wishes to use a single bus bay and ground space for an employee-operated ticket vending/customer service kiosk (together, the "Premises"), the latter provided by Tenant, from which Tenant will operate daily commercial bus passenger services. Tenant also desires for its agents, operators, invitees and customers to have access to benches, restrooms, covered canopy areas, and parking facilities (the "Common Areas") located at the Transcenter. Landlord and Tenant hereby enter into a License Agreement permitting Tenant to use Premises and Common Areas for the term of the License Agreement (the "License") at the monthly license fee rate (the "Rent") provided for under Section 4 of this Agreement, and upon all the terms, covenants, conditions, and considerations set forth herein:

Premises is comprised of shared use of a single bus parking bay and approximately twenty-four (24) square feet of ground space for an employee-operated ticket vending/customer service kiosk provided, maintained and operated by Tenant in the City of Montclair, County of San Bernardino, State of California, on real property commonly known as the Montclair Transcenter, located at 5091 Richton Street, Montclair, CA 91763, and as more particularly described/illustrated in the site plan attached hereto as Exhibit "A", and incorporated herein for all purposes. Dimensions of the ticket vending/customer service kiosk are attached as Exhibit "B". A photo image of a standard ticket vending/customer service kiosk used by Tenant is attached as Exhibit "C". A weekly schedule of Tenant's proposed bus service operating schedule is attached as Exhibit "D".

Tenant, its employees, operators, invitees, and customers, shall have continuous and uninterrupted right of access to and from the Common Areas, and Tenant-regulated access to Tenant-operated ticket vending/customer service kiosk and bus bay on Premises to board and de-board to and from Tenant-provided commercial bus transport vehicles.

3. **TERM.** The term of this License shall be five (5) years (the "Initial Term"), commencing on February 1, 2022 (the "Commencement Date"), and extending through January 31, 2027 (the "Expiration Date"), unless sooner terminated or extended pursuant to the following provisions:

(a) **Option to Extend.** Upon expiration of the Initial Term, and subject to Landlord's approval, Tenant may request to extend the term of this License for an additional term of five years and, upon the expiration thereof, request an additional term of five years (together or separately, the "Extension Option"), provided Tenant gives

Landlord no less than ninety (90) days prior written notice of intent to separately exercise each of the Extension Options. Thereafter, any renewal of the License Agreement shall be subject to the discretion of the Landlord.

(b) **Terms Remain Same During Extension Option.** All provisions of this License shall remain the same during the Term of each Extension Option, excluding the Rent, which shall be adjusted as provided for in Section 4 herein.

4. **RENT AND FACILITIES SUPPORT.** Tenant hereby agrees to the following terms for monthly rent and one-time facilities improvement contribution:

(a) **Monthly Rent.** Throughout the Initial Term of this License, Tenant shall pay to Landlord, for use of the Premises, rent (the "Rent") in equal monthly installments of \$1,800.00, payable in advance, on or before the first day of each calendar month of the Term. Monthly Rent shall be based upon the number of trips conducted out of the Transcenter on a daily basis, including drop offs and pick ups (the "Daily Trip Rate"), as provided for in Exhibit D, attached hereto, not to exceed four (4) daily trips during the a.m. hours and seven (7) daily trips during the p.m. hours, for a total of 11 daily trips. Any increase in the Daily Trip Rate shall require the approval of Landlord, in consultation with Omnitrans, and shall result in a ten percent (10%) increase to the monthly Rent for each additional daily trip added to the Daily Trip Rate; provided, however, there shall be no reduction to the Monthly Rent for any decrease to the Daily Trip Rate. Except as provided for in Section 15 herein, Rent for any period of less than one month shall be paid at the monthly rate set forth in this Subsection. Rent shall be payable to Landlord at its address set forth below, or to such other address as Landlord may designate by notice as provided herein:

CITY OF MONTCLAIR
ATTN: FINANCE DIRECTOR
PO BOX 2308
5111 BENITO STREET
MONTCLAIR, CA 91763-2808

(b) **Rent Adjustment.** Upon notice by Tenant of intent to exercise the Extension Option, and each of them, as provided for in Section 3 herein, Rent for each month of the Term of each Extension Option shall automatically be increased by the greater of ten (10) percent, or the cumulative *Annual Average* of the *Consumer Price Index for the Riverside-San Bernardino-Ontario Area* for the five-year Term preceding each five-year option exercised.

- (i) For the first five-year extension option, monthly rent shall increase to no less than \$1,980, effective February 1, 2027.
- (ii) For the second five-year extension option, monthly rent shall increase to no less than \$2,178, effective February 1, 2032.

Failure by Landlord to automatically adjust the monthly Rent during each Extension Option pursuant to this subsection shall not prohibit Landlord from retroactively and prospectively implementing a Rent adjustment as provided for herein.

(c) **Facilities Improvement Contribution.** As a condition of approval of this License, Tenant agrees to make a one-time contribution of \$25,000 toward Landlord's acquisition and installation of a self-cleaning restroom facility (the "Restroom") for use and enjoyment by Tenant and Landlord's agents, representatives, operators, invitees, customers, and the public. Landlord shall be fully responsible for purchase, acquisition, installation, and ongoing maintenance and repair of the Restroom. Restroom shall be installed in the Common Areas of the Transcenter and shall be accessible to Tenant's agents, representatives, operators, invitees, and customers. To

comply with this Subsection, Tenant shall deposit with Landlord, not more than thirty (30) days following the Commencement Date, at the address provided for in Section 4(a) herein, a check in the sum of \$25,000 made out to the "CITY OF MONTCLAIR".

5. **USE OF PREMISES.** Tenant shall use the Premises for the conduct of Tenant's business operations and any other activities reasonably related thereto and for any other lawful purposes including, but not limited to, (i) picking up and dropping off customers, (ii) selling tickets to customers, and (iii) providing customer support. Tenant recognizes, accepts and agrees that the Transcenter is a multimodal transit center used for, but not limited to, commuter rail, commuter light rail, ride sharing, ride hailing, taxi, electric scooter and bike transit, and other public and private bus/transit passenger services (together, the "Transit Services"), and that Tenant's License to use Premises shall not deny, prevent, interfere with, or otherwise abrogate Landlord's use of the Transcenter for any and all Transit Services. For use of Premises, Tenant agrees to provide, and shall provide, Landlord and Omnitrans with a monthly schedule of Tenant's daily bus services at the Transcenter for coordination of use of the shared bus bay as provided for in Section 2 herein. The monthly bus schedule for each succeeding month shall be provided no later than the 15th day of the preceding month; provided, however, if the daily schedule of Tenant's bus services is not subject to monthly, quarterly, or semi-annual adjustment, Tenant shall provide a quarterly, semi-annual or annual bus schedule, but no less than annually, as determined appropriate by Landlord, no later than the 15th day of the month that precedes the month in which the schedule is first effective.

6. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF TITLE.** Landlord hereby represents, warrants, and covenants to Tenant the following as of the Commencement Date:

(a) **Authority of Landlord.** Landlord has full right, power, and authority to grant the License conveyed herein and to execute and perform all of the terms, provisions, covenants, and agreements provided in this License.

(b) **Premises Complies with Legal Requirements.** To the best of Landlord's knowledge, the Premises complies with all applicable zoning requirements, ordinances, regulations, and all applicable laws affecting the Premises or Tenant's use of the Premises or Common Areas appurtenant to the Premises including, but not limited to, the Americans with Disabilities Act or other laws affecting handicapped access, and any environmental impact or traffic studies related thereto.

(c) **Premises Free of Hazardous Defects.** To the best of Landlord's knowledge, the Premises does not contain any asbestos or Hazardous Materials (as defined in Section 22 herein) and Landlord is not in violation of any federal, state, or local law, ordinance or regulation relating to industrial hygiene or to the environmental conditions on, under or about the Premises including, but not limited to, soil and ground water condition, and that no previous occupant of the Premises has used, generated, manufactured, stored or disposed of any Hazardous Materials on, under or about the Premises.

(d) **Enjoyment Subject to Disruption by Gold Line Extension.** Tenant's use of Premises may be subject to termination, interruption or relocation due to the planned extension of the Los Angeles Metropolitan Transportation Authority (Metro) "L" Line (formerly the Gold Line) light rail service to the Transcenter and the construction of a platform to service the "L" Line and its agents, operators, invitees, and customers. If Tenant elects to relocate to a tenantable location at the Transcenter pursuant to the requirements of this Subsection, Rent provisions as provided for in Section 15 herein, as applicable, shall apply.

7. **QUIET ENJOYMENT.** Except as otherwise provided for in this Section and Sections 6(d) and 16 herein, Landlord covenants and agrees that so long as Tenant observes and performs all of the agreements and covenants required of it hereunder, and otherwise is in full compliance with federal, state, and local laws and ordinances including, in association with Tenant's business operations at the Premises, those related to the maintenance of peace and order and the prohibition of illegal activities either by the Tenant or Tenant's employees, agents or clientele, Tenant shall peaceably and quietly have, hold, and enjoy the Premises for the Term without any

encumbrance, interference, or hindrance by Landlord, and any failure to do so shall be cause and grounds for revocation of this License. If Tenant's continued use of the Premises is restricted, limited or denied through rezoning, environmental impact edict, or other action or determination of any public or quasi-public agency or governmental authority, including Landlord or Parties, this License, at the option of Tenant, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Term will abate and Tenant shall have no other recourse of action or complaint either by appeal, arbitration, or through courts of competent jurisdiction.

8. **UTILITIES.** Except as otherwise provided for in this Section, Landlord shall pay for all regular utility service charges related to operation of the Premises. Tenant shall pay for all utility services related to Tenant's operation of an employee-operated ticket vending/customer service kiosk.

9. **ASSIGNMENT AND SUBLETTING.** Tenant shall have no right to, and shall not assign or attempt to assign, this License or sublease, or attempt to sublease, all or a part of the Premises for any lawful purpose to any person or entity at any time or from time to time; provided, however, Tenant may assign this License to an entity that acquires all or substantially all ("substantially" defined as 90% or more) the assets of Tenant. Except as defined above, if Tenant assigns this License or subleases all or a part of Premises for any purpose, Tenant shall be in breach of this License and the penalty shall be revocation of this License and no other action or penalty shall be imposed except that Tenant, as assignor/sub lessor, shall be fully liable and responsible for any legal and other costs so declared by the assignee/sub lessee and any legal and other costs so declared by the Landlord related to termination of the sublease.

10. **ALTERATIONS, IMPROVEMENTS, AND ADDITIONS.** Tenant shall not, without Landlord's consent, which consent shall not be unreasonably withheld, conditioned or delayed, and subject to appropriate permits and/or certificate of occupancy issued by Landlord, install signage, or make any alterations, improvements, or additions in, on, or about the Premises which Tenant may deem necessary or desirable, including installation and operation of an employee-operated ticket vending/customer service kiosk. Tenant shall remove such alterations, improvements, or additions made by it in, on, or about the Premises upon the Expiration Date of the License or any Extension Option. Tenant's personal property and its trade fixtures, including all signs, ticket vending/customer service kiosks, machinery, equipment, and furnishings, shall remain the property of Tenant and shall be removed by Tenant. Any personal property, trade fixtures, signs, ticket vending/customer service kiosks, alterations, improvements, or additions not removed by Tenant within thirty (30) days after the Expiration Date of the License or any Extension Option shall automatically become the property of Landlord and Tenant shall be subject to a reasonable removal, repair, and disposal fee. Tenant shall repair any material damage to the Premises caused by Tenant's or Landlord's removal of Tenant's personal property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions. Alterations, improvements or additions to the Premises, as may be required solely by reason of the nature of Tenant's business, shall be at the sole cost of Tenant and such alterations, improvements or additions may include, but not be limited to, installation of signage; acquisition, installation, maintenance, and provision for an employee-operated ticket vending/customer service kiosk; and any other related improvements, utilities, and equipment designed, constructed and/or provided by Tenant in support of such alterations, improvements or additions. Landlord shall, at its sole expense or as otherwise provided for in mutual agreement between the Parties, make any alterations, improvements, or additions to the Premises (structural or non-structural) that may be required on account of any existing or future laws of any governmental agency or authority.

11. **REPAIRS AND MAINTENANCE.** Tenant shall, at all times, maintain the employee-operated ticket vending/customer service kiosk and other appurtenances installed by Tenant on the Premises in a neat and orderly state. Landlord shall, in compliance with mutual agreements between the Parties, maintain the Premises and Common Areas and make all necessary repairs thereto, including structural repairs that may include, but not be limited to, the bus shelter(s) and surface parking lot(s) located within the Transcenter. Upon the Expiration Date of the License or any Extension Option, Tenant shall remove all personal property and its trade fixtures including

all signs, machinery, equipment, employee-operated ticket vending/customer service kiosk, and furnishings and surrender the Premises in as good order, repair, and condition as the same were at commencement of the Term of this License; reasonable wear and tear excepted.

12. **TAXES.** Tenant shall pay any and all taxes, if any, assessed against and levied upon Tenant's trade fixtures, and all other personal property of Tenant contained on the Premises or in connection with Tenant's use or occupancy of the Premises.

13. **INSURANCE.** The Parties shall maintain throughout the Term, at their sole cost and expense, self-insured retention (SIR) funds and/or liability policies against loss, injury, damage to the Transcenter, any perils included within the classifications of fire, vandalism, explosion, malicious mischief, and special extended perils ("all risk"), and any risk covered under Extended Coverage Endorsement. Tenant shall maintain, at its sole cost and expense, a comprehensive general liability policy including coverage of contractual liability as respects this License, providing a combined single limit of liability of not less than \$3,000,000 per occurrence on Premises. Tenant shall annually furnish to Landlord a certificate of insurance evidencing the aforesaid coverage naming each of the Parties as additional insured. Notwithstanding any provision herein to the contrary, Tenant may satisfy its insurance obligations hereunder by self-insuring any or all of its insurance liabilities and Tenant shall annually furnish to Landlord certificates evidencing such coverage.

14. **INDEMNITY.** Except as otherwise agreed herein, each party agrees to defend, indemnify, and save the other party harmless from any and all claims, demands, costs, and expenses of every kind whatsoever, including reasonable attorney's fees for the defense thereof, arising from the indemnifying party's wrongful act or negligence in, on, or about the Premises. In case of any action or proceeding brought against either party by reason of any such claim, upon notice from such party, the indemnifying party covenants to defend such action or proceeding by counsel reasonably satisfactory to the other party, unless such action or proceeding alleges the joining or concurring wrongful act or negligence of both parties, in which case both parties shall share equally in the defense of such action or proceedings.

15. **DAMAGE OR DESTRUCTION.** If the Premises is damaged or destroyed in whole or in part by fire or other casualty, Parties shall either:

- (i) Repair and restore the Premises to a good tenantable condition;
- (ii) Tenant may elect to terminate the License; or
- (iii) Landlord may offer to temporarily relocate Tenant to a tenantable location at the Transcenter from which to operate its business pursuant to the provisions of Section 5 herein until such time the Premises is restored to a tenantable condition.

All Rent shall wholly abate in case the entire Premises is not tenantable and there is interference with the operation of the business of Tenant. In the event Landlord relocates Tenant to a tenantable location at the Transcenter, Rent shall be paid upon relocation and without pro rata adjustment. Parties shall commence and complete all work required to be done under this Section 15 with reasonable promptness and diligence. Tenant shall be liable to the Parties for damage to the Premises caused by fire or other risks, whether embraced or not within the Parties' SIR or insurance coverage, if the same is due to the negligent act or omission of Tenant. If the Parties do not commence the repair or restoration within fifteen (15) days after the damage or destruction occurs, if repair or restoration will require more than ninety (90) days to complete, or if Landlord is unable to relocate Tenant to a tenantable location at the Transcenter within thirty (30) days Tenant may, at Tenant's option, terminate this License by giving Landlord notice of Tenant's election to do so at any time prior to the commencement of the repair, restoration, or relocation which, in that event, this License shall terminate as of the date of such damage or destruction.

16. **PUBLIC PURPOSE.** Transcenter is a public property used by transit agencies, both public and private, for the delivery of a public good — providing transit services to the public (the "Public Purpose"). As such, the Transcenter is subject to legislative mandates and the acts, decisions, and omissions of local, regional, state, and federal agencies and actors that may affect the purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter that lay outside the control or authority of the Parties. Furthermore, the Landlord separately and the Parties together, derive no profit from operation and maintenance of the Transcenter and subsidize its Public Purpose; therefore, the Parties cannot and shall not be held liable for legislative mandates and any acts, decisions or omissions that affect the Public Purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter. If legislative mandates and/or the acts, decisions, or omissions of local, regional, state, and federal agencies and actors affect the Public Purpose, operations, design, control, ownership, site plan, and/or other physical or operational features of the Transcenter and the Premises, or a substantial portion thereof, is to be taken by easement, vacation, or dedication of land or sold or repurposed for whatever reason including a different public purpose (the "Taking"), Landlord shall, if practicable or if not prohibited by real property negotiations or other legal limitations or prohibitions, provide Tenant with advance notice of no less than ninety (90) days of the date such Taking is legally completed and this License, at Landlord's discretion, shall terminate as of the date the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein. Thereafter, but not more than thirty (30) days, Tenant shall remove all trade fixtures and personal/removable property from the Premises and the Parties shall have no liability for removal of, or loss or damage to, trade fixtures or personal property of Tenant, nor for Tenant's loss of business, revenue or profitable gains or earnings. As provided in Section 5 herein, Tenant may, if available, accept relocation to a tenantable location at the Transcenter from which to operate its business. If any other taking or repurpose of the Transcenter that includes the Premises adversely and substantially affects Tenant's use, access, or rights of ingress or egress of or to the Premises then Tenant may elect to terminate this License as of the date the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein, and Tenant shall remove all of Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions from the Premises, and the Parties shall have no liability to Tenant for loss of, or damage to, Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations or improvements made to the Premises by Tenant, nor for loss of business, revenue, profitable gains or earnings, this License, or any other consequential or special damages such as Tenant's relocation or moving expenses, and Tenant shall have no recourse of action or claim against the Parties. Tenant's decision to terminate or relocate to a tenantable location at the Transcenter shall be made in writing within thirty (30) days after Landlord has given Tenant written notice of the Taking or repurpose of the Premises; or in the absence of such notice, within fifteen (15) days after the Premises is no longer available, or substantially available, to Tenant for the business purposes set forth in Section 5 herein. If Tenant does not terminate this License in accordance with this Section, but instead accepts relocation to a tenantable location at the Transcenter from which to operate its business pursuant to the provisions of Section 5 herein, this License shall remain in full force and effect. In the event Tenant fails to remove Tenant's personal/removable property, trade fixtures, ticket vending/customer service kiosks, alterations, improvements, or additions to the Premises Tenant shall not be entitled to, and Parties shall not be obligated to pay to Tenant, the salvage value/adjusted cost basis for Tenant's personal property, trade fixtures, ticket vending/customer service kiosk, alterations, improvements, or additions to the Premises not returned to Tenant.

17. **DEFAULTS; REMEDIES.**

(a) **Default by Tenant.** The occurrence of any of the following events constitutes a material default of this License by Tenant:

(i) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder, as and when due, where the failure continues for a period of twenty (20) days after Tenant receives notice thereof from Landlord.

(ii) The failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this License to be observed or performed by Tenant, other than those described in Subsection (a)(i) above of this Section, where the failure continues for a period of thirty (30) days after Tenant receives notice thereof from Landlord; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the thirty- (30-) day period and thereafter diligently completes the cure.

(iii) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by Tenant of a petition to have Tenant adjudged as bankrupt; or the judicial declaration of Tenant as bankrupt.

(iv) The appointment of a trustee or receiver to take possession of substantially all Tenant's assets located at the Premises or of Tenant's interest in this License if possession is not restored to Tenant within thirty (30) days.

(v) The attachment, execution, or other judicial seizure of substantially all Tenant's assets located at the Premises or of Tenant's interest in this License, if the seizure is not discharged within thirty (30) days.

(b) **Remedies upon Tenant's Default.** In the event of any such material default by Tenant, Landlord may, after giving notice as provided above, remove Tenant's property and take and hold possession of the Premises and expel Tenant and pursue those remedies available to Landlord under the laws of the State of California.

(c) **Default by Landlord.** Landlord shall not be in default unless Landlord fails to perform any covenants, terms, provisions, agreements or obligations required of it within a reasonable time, but in no event later than thirty (30) days after notice by Tenant to Landlord; provided that if the nature of Landlord's obligation is such that more than thirty (30) days are reasonably required for performance, then Landlord shall not be in default if Landlord commences performance within the thirty- (30-) day period and thereafter diligently completes performance.

(d) **Remedies upon Landlord's Default.** If Landlord defaults in the performance of any of the obligations or conditions required to be performed by Landlord under this License, Tenant may, after giving notice as provided above, elect to terminate this License upon giving 30 days' notice to Landlord of its intention to do so. In that event, this License shall terminate upon the date specified in the notice, unless Landlord has meanwhile cured the default to the satisfaction of Tenant. In the event that any representations and warranties set forth in this License (including but not limited to those set forth in Section 6 herein) shall cease to be the case, and if Landlord shall have failed to commence to cure within sixty (60) days after notice from Tenant and thereafter diligently completes the cure of the same, then, except as specifically provided elsewhere in this License, Tenant shall have the right to terminate this License upon notice to Landlord.

18. **HOLDING OVER.** If Tenant remains in possession of the Premises after the expiration or termination of this License, and without the execution of a new License, Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month, subject to all of the conditions, provisions, and obligations of this License.

19. **NOTICES.** All acceptances, approvals, consents, notices, demands or other communications required or permitted to be given or sent by either party to the other, unless otherwise provided, shall be deemed to have been fully given when made in writing and delivered in person or deposited in the United States mail, certified and postage prepaid, addressed to the name and address set forth below. The address and person for written communication may be changed upon written notice to the other party.

To the Landlord: CITY OF MONTCLAIR
ATTN: CITY MANAGER
PO BOX 2308

5111 BENITO STREET
MONTCLAIR, CA 91763-2808

To the Tenant:

GREYHOUND LINES, INC.
ATTN: LEGAL DEPARTMENT
350 N. ST. PAUL STREET
DALLAS, TX 75266-0362

Copy to – Greyhound Lines, Inc. Real Estate Department
(same address)

20. **WAIVER OF SUBROGATION.** Landlord and Tenant, and all parties claiming under or through them, hereby mutually release and discharge each other, any other tenants or occupants of the Premises, and the officers, employees, agents, representatives, customers and business visitors of Landlord or Tenant or such other tenants or occupants, from all claims, losses, and liabilities arising from, or caused by, any hazard covered by insurance on or in connection with the Premises, even if caused by the fault or negligence of a released party. This release shall apply only to the extent that such claim, loss, or liability is covered by insurance.

21. **ENVIRONMENTAL MATTERS.** Tenant will comply with all environmental laws during the term of the License, but shall bear no liability whatsoever and shall not assume any conditions or responsibilities for any existing environmental materials or Hazardous Materials on the Premises; it is provided, however, that Tenant shall bear liability for, and shall be solely responsible for remediating, removing, or abating any environmental materials and/or Hazardous Materials or conditions Tenant may bring on to Premises by act, performance, omission, or fault, whether intentional or unintentional. Landlord agrees to indemnify, defend, and hold Tenant harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees) that Tenant may incur as a result of any claim, demand or action related to environmental conditions, Hazardous Materials or any other environmental laws and regulations not directly resulting from Tenant's activities on the Premises, and Tenant agrees to indemnify, defend, and hold Parties harmless from and against any and all loss, damage, liability and expense (including reasonable attorneys' fees) that Parties may incur as a result of any claim, demand or action related to environmental conditions and/or Hazardous Materials or conditions introduced to the Premises by act, performance, omission, or fault of Tenant, whether intentional or unintentional.

22. **HAZARDOUS MATERIALS.** The term "Hazardous Materials" as used herein shall include, but not be limited to, the following: asbestos, flammable explosives, dangerous substances, pollutants, contaminants, hazardous wastes, toxic substances, and any other chemical, material, or related substance exposure to which is prohibited or regulated by any governmental agency or authority having jurisdiction over the Premises; any substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, by Superfund Amendments and Reauthorization Act 42 U.S.C. §6901, *et seq.*; the Hazardous Materials Transportation Act, 42 U.S.C. §6901, *et seq.*; Clean Air Act, 42 U.S.C. §7901, *et seq.*; Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*; Clean Water Act, 33 U.S.C. §1251, *et seq.*; the laws, regulations or rulings of the state in which the Premises is located or any local ordinance affecting the Premises; or the regulations adopted in publication promulgated pursuant to any of such laws and ordinances.

23. **MISCELLANEOUS.**

(a) **Signs.** Prior to erecting or posting any sign, Tenant shall submit to the Montclair Community Development Department a sign program, and no sign shall be erected or posted on the Premises or any structure on the Premises or Transcenter by Tenant without first having received the necessary approval and permits from the Landlord. Notwithstanding any other provision of this License, Tenant shall be solely responsible for the design, acquisition, purchase, installation, electrification, and ongoing utility requirements for any sign(s) erected or posted

on the Premises or Transcenter. All repair work necessary for utility installation to sidewalks, plaza, pavement, landscaping, existing structures, etc., shall be done under a permit issued by the City's Public Works Department and performed to the satisfaction of the City Engineer.

(b) **Ticket Vending/Customer Service Kiosk.** Prior to erecting or installing any ticket vending/customer service kiosk Tenant shall submit to Landlord a site plan, and no kiosk or any structure shall be erected or installed on the Premises or Transcenter by Tenant without first having received the necessary approval and permits from the Landlord. Notwithstanding any other provision of this License, Tenant shall be solely responsible for the design, acquisition, purchase, installation, electrification, and ongoing utility requirements for any ticket vending/customer service kiosk erected or installed on the Premises or Transcenter. All repair work necessary for utility installation to sidewalks, plaza, pavement, landscaping, existing structures, etc., shall be done under a permit issued by the City of Montclair Public Works Department and performed to the satisfaction of the City Engineer.

(c) **Severability; Choice of Law.** The invalidity or unenforceability of any provision of this License, as determined by a court of competent jurisdiction, shall in no way affect the validity of the remainder of this License or any other provision hereof. **THE LAWS OF THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, AND CITY OF MONTCLAIR SHALL GOVERN THIS LICENSE.**

(d) **Entire Agreement.** This License and any addenda and exhibits attached hereto or to be attached hereto, set forth all of the covenants, promises, agreements, and conditions between Landlord and Tenant concerning the Premises and this License, and there are no covenants, promises, agreements or conditions, either oral or written, between them. This License may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

(e) **Attorney's Fees.** If either party named herein brings an action to enforce the terms of this License or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to reasonable attorney's fees to be paid by the losing party as fixed by the court.

IN WITNESS WHEREOF, the parties hereto have executed this instrument to be effective as of the day and year first above written.

Landlord:

CITY OF MONTCLAIR
A Municipal Corporation

By: _____
Name: Bill Ruh, Mayor Pro Tem

Tenant:

GREYHOUND LINES, INC.
a Delaware corporation

By: _____
Name: David S. Leach, President and CEO

ATTEST:

By: _____
Name: Andrea Myrick, City Clerk

APPROVED AS TO FORM:

By: _____
Name: Diane Robbins, City Attorney

EXHIBIT "A"
PREMISES
SITE PLAN
OR LEGAL DESCRIPTION

Montclair Transcenter
5091 Richton Street, Montclair, CA 91763

Greyhound Bus Bay Assignment (Illustrative)
Ticket Kiosk Assignment (Illustrative)

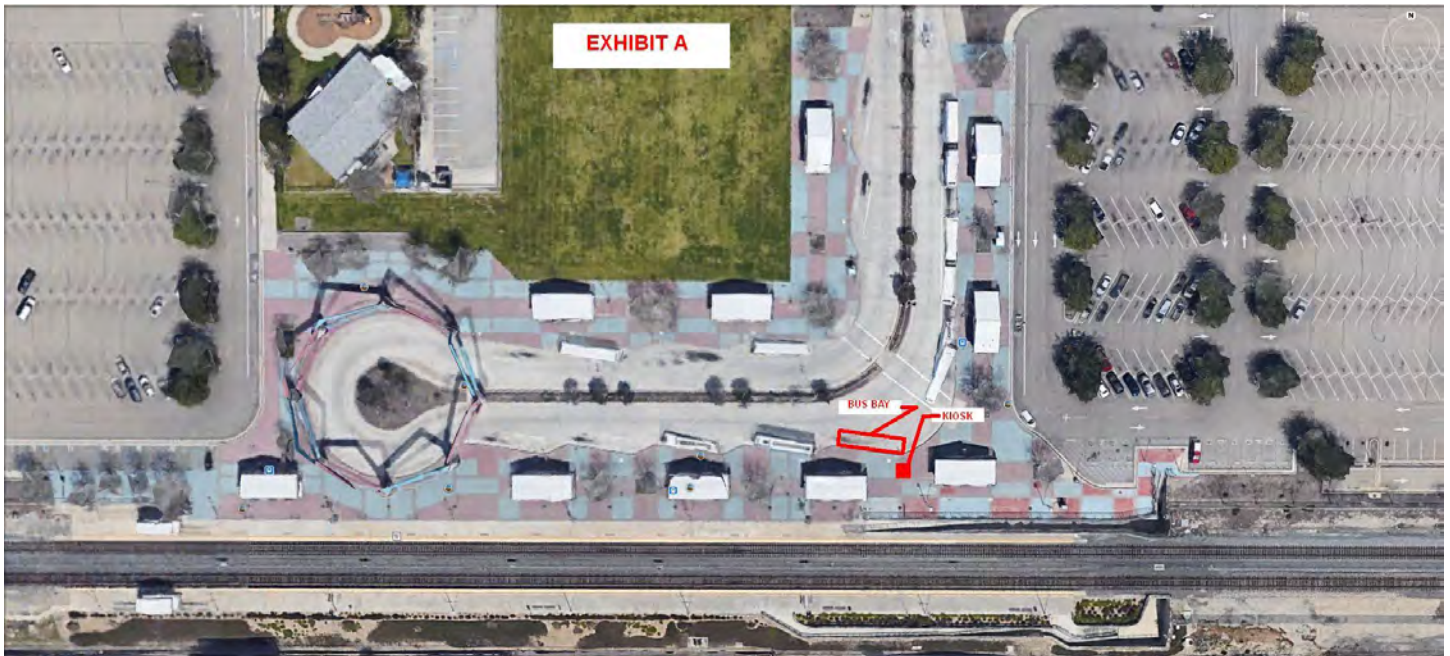
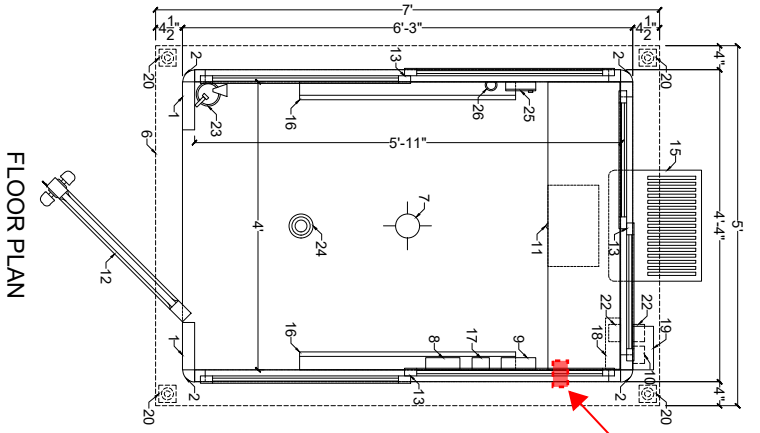
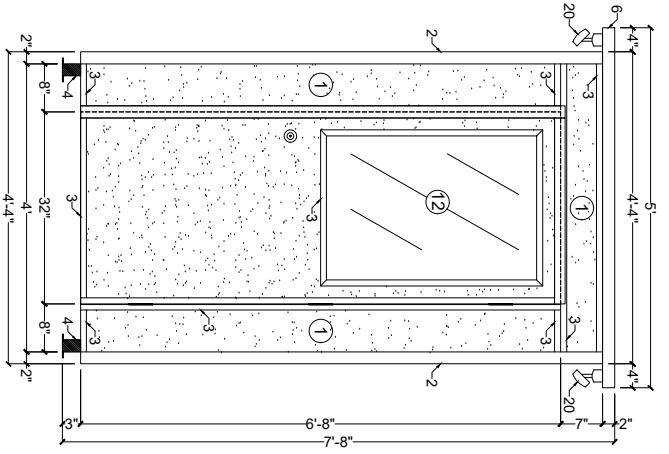


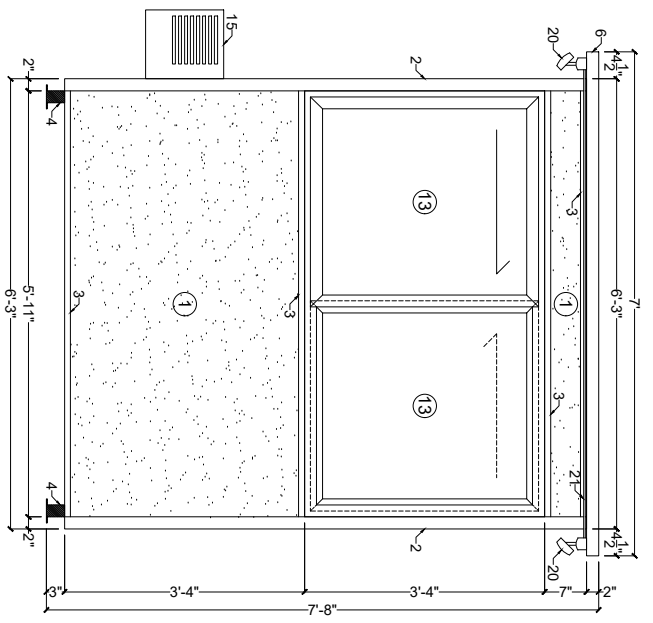
EXHIBIT B 4' X 6' STANDARD BOOTH



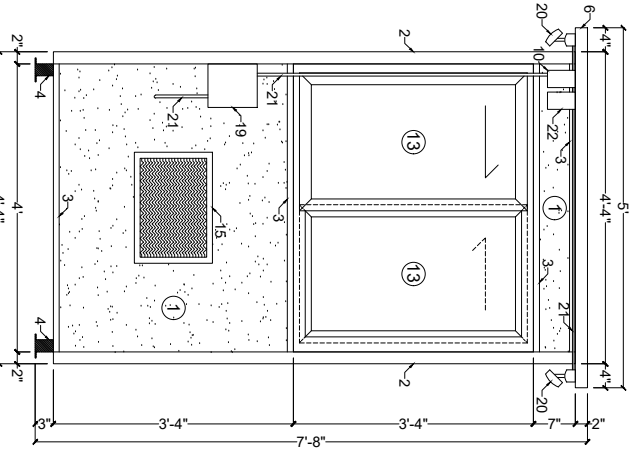
FLOOR PLAN



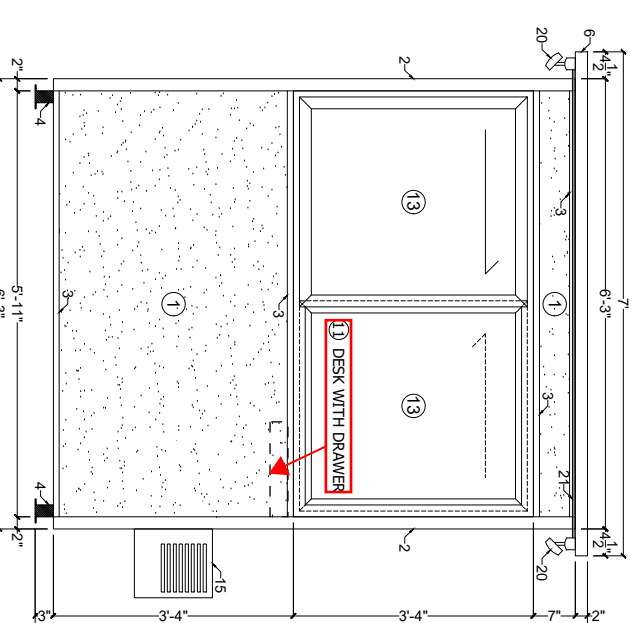
FRONT ELEVATION



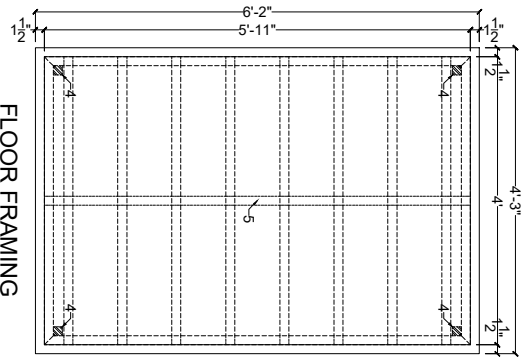
LEFT ELEVATION



REAR ELEVATION



RIGHT ELEVATION



FLOOR FRAMING

NOTES :

- ① SANDWICH PANEL: ALUMINUM FRAME WITH 2" DOUBLE LAYER Pkg PANELS AND R-10 XPS FOAM INSULATION
- ② CORNER COLUMN
- ③ C - CHANNEL
- ④ LEGS
- ⑤ BASE FRAME: WELDED 1.5" SQUARE STEEL TUBING COVERED WITH DIAMOND FLOOR PLATE
- ⑥ ROOF WITH OVERHANG (SPECIFIED ON DRAWING)
- ⑦ INTERIOR LIGHTING
- ⑧ LIGHT SWITCH
- ⑨ QUAD OUTLET
- ⑩ EXTERIOR ELECTRICAL JUNCTION BOX
- ⑪ DESK WITH DRAWER
- ⑫ 32" SWING DOOR WITH GLASS
- ⑬ SLIDING WINDOW
- ⑭ ~~FIXED WINDOW~~
- ⑮ WALL MOUNTED A/C (OPTIONAL)
- ⑯ ELECTRIC BASEBOARD HEATER (OPTIONAL)
- ⑰ THERMOSTAT
- ⑱ CIRCUIT BREAKER PANEL RATED 125 AMP (OPTIONAL)
- ⑲ EXTERIOR ELECTRICAL DISCONNECT SWITCH (OPTIONAL)
- ⑳ EXTERIOR LIGHTING (OPTIONAL)
- ㉑ CONDUIT
- ㉒ ETHERNET PORT &/OR PHONE LINE (OPTIONAL)
- ㉓ FIRE EXTINGUISHER
- ㉔ SMOKE DETECTOR
- ㉕ FIRST AID KIT
- ㉖ WALL MOUNTED FLASHLIGHT

This structure has been analyzed and determined to be able to withstand the following loads:
 Design Wind Load: 110 mph
 Ground Snow Load: 40 psf

The foundation and anchorage was not included in the analysis. The structure was analyzed assuming it has been properly anchored to a foundation. It is the responsibility of the customer to design the foundation and booth anchorage per their specific site and jurisdictional requirements.



Safe, Secure, Convenient.
 527 NY-Rte 303 Orangeburg, NY 10962
 Tel. (844) 992 6684 www.guardianbooth.com

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ORIGINAL DATE:	08/01/2019	REVISION NO.:	1 - ORIGINAL
CUSTOMER NAME:	STANDARD BOOTH		
SCALE:	3/4" = 1'		
PAGE:	1 of 1		
DRAWN BY:	HEATHER WILLIAMS		

EXHIBIT "C"



4x6 Guardian Booth on Forklift



Inside with Heating and A/C units at United Nations

EXHIBIT D

Greyhound Time Occupancy- Claremont CA/ Pomona Transit Center

Greyhound Schedule #	AM												Total		
	12	15	30	45	1	15	30	45	2	15	30	45			
Normal Daily Bus Schedules															
Daily Extra Sections															
Daily Total Greyhound	1														1

AM
Total
4

Greyhound Time Occupancy- Claremont CA/ Pomona Transit Center

Greyhound Schedule #	PM												Total		
	12	15	30	45	1	15	30	45	2	15	30	45			
Normal Daily Bus Schedules															
Daily Extra Sections															
Daily Total Greyhound	1														1

PM
Total
8



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** EDD100
SECTION: CONSENT - AGREEMENTS **DEPT.:** ECONOMIC DEV.
ITEM NO.: 3 **PREPARER:** M. FUENTES

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-79 WITH BARBARA PENNELL, A PURCHASE AND SALE AGREEMENT FOR PROPERTY LOCATED AT THE NORTHWEST CORNER OF CENTRAL AVENUE AND RICHTON STREET

CONSIDER AUTHORIZING A \$1,550,000 APPROPRIATION FROM THE ECONOMIC DEVELOPMENT FUND FOR ACQUISITION AND CLOSING COSTS ASSOCIATED WITH AGREEMENT NO. 21-79

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN AGREEMENT NO. 21-79 AND ALL OTHER DOCUMENTS RELATED TO ACQUISITION OF THE PROPERTY

REASON FOR CONSIDERATION: On September 20, 2021, in closed session, the City Council authorized City staff to submit a purchase offer in the amount of \$1,550,000 to Barbara Pennell (Pennell Holding Company) for the acquisition of approximately 2.3 acres of vacant land on the northwest corner of Central Avenue and Richton Street.

On November 2, 2021, a letter of intent from Ms. Pennell was provided to the City of Montclair related to the purchase of the property.

A copy of proposed Agreement No. 21-79 is included for City Council review and consideration.

BACKGROUND: In 2006, the City Council adopted the North Montclair Downtown Specific Plan (NMDSP), pursuant to Resolution No. 06-2628, to provide the framework for new development opportunities for a mixed-use, transit-oriented district between the Montclair Transcenter and the Montclair Place regional shopping center, an area of roughly a 150 acres.

In 2017, the City Council amended the NMDSP pursuant to Resolution No. 17-3149 to upgrade the contents of the NMDSP expanding upon the existing boundaries of the specific plan and allowing for additional commercial, office, and retail uses, structured parking, and additional design considerations to occur, thus creating strong visual and pedestrian connections, particularly between the Montclair Transcenter and Montclair Place.

Property Acquisition

The City is interested in acquiring the property located at the northwest corner of Central Avenue and Richton Street because of its strategic location in the NMDSP area. The subject property is located on a highly visible and desirable portion of Central Avenue and Richton Street, directly south of the City's northern border with the City of Upland and within walking distance to the Montclair Transcenter. The property is located within one of the most densely zoned areas of the NMDSP and is approximately 2.3 acres in size. The western portion of the property is zoned under the Station District designation (60-80 units per acre) and the eastern portion is zoned under Town Center designation (50-60 units per acre).

The area surrounding the property has seen dramatic changes with the development of new high-quality housing projects constructed pursuant to the design standards of the NMDSP. Staff continues to work with developers to construct high-quality housing and mixed-use developments in the area around the property, further confirming the area's strong continued development potential.

Staff has received several development proposals for the property; however, none of the proposals have met the density or architectural standards of the NMDSP. The property is irregular in shape and, for the most part, is landlocked except for a small sliver that abuts Central Avenue. In addition to the irregular property size and lack of proper street access, several drive aisle easements run along the southern portion of the property providing access points to the surrounding properties. These particularities of the property have resulted in developers not being able to provide proposals that meet the density and architectural standards of the NMDSP. As such, staff is proposing acquiring the property in the hope of acquiring the surrounding properties in the future, in order to accommodate future developments that would meet the density and architectural standards of the NMDSP and to address the easement and access issues of Central Avenue and Richton Street properties.

Further, because of this property's location in the NMDSP area, staff considers the acquisition of the property an ideal opportunity to further improve and stabilize the existing properties along Central Avenue and to act as a catalyst for future mixed-use development on the eastern boundary of the NMDSP.

As such, staff is recommending the purchase of the approximately 2.3 acre property located at the northwest corner of Central Avenue and Richton Street.

FISCAL IMPACT: Agreement No. 21-79 provides for the City's acquisition of the property located at the northwest corner of Central Avenue and Richton Street for \$1,550,000. An appropriation of \$1,550,000 is requested from the Economic Development Fund to cover costs of the acquisition and related closing costs.

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

1. Approve Agreement No. 21-79 with Barbara Pennell, a Purchase and Sale Agreement for property located at the northwest corner of Central Avenue and Richton Street.
2. Authorize a \$1,550,000 appropriation from the Economic Development Fund for acquisition and closing costs associated with Agreement No. 21-79.
3. Authorize City Manager Edward C. Starr to Sign Agreement No. 21-79 and All Other Documents Related to Acquisition of the Property.

**AGREEMENT FOR PURCHASE AND SALE AND
JOINT ESCROW INSTRUCTIONS**

This AGREEMENT OF PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is entered into by and between the **CITY OF MONTCLAIR**, a municipal corporation (“**Buyer**”), and **PENELL HOLDING COMPANY, LTD.**, a California corporation (“**Seller**”). Buyer and Seller are sometimes individually referred to herein as “**Party**” and collectively as “**Parties.**” The Parties hereto have executed this Agreement on the dates set forth below next to their respective signatures. This Agreement shall be effective as of the date, following all legally required notices and hearings, this Agreement has been approved by Buyer’s governing body or its delegated representative and signed by all Parties (“**Effective Date**”).

RECITALS

A. Seller is the owner in fee of real property bearing County Assessor’s Parcel Number Nos. 1007-393-04 & 1007-681-13 in the City of Montclair, County of San Bernardino, State of California (“**Property**”), as more fully described in **Exhibit A** attached hereto and incorporated herein by reference. Reference herein to “**Property**” shall include all of Seller’s right, title and interest in and to any and all improvements, fixtures, rights-of-way, utility rights, entitlements, claims or other benefits in any way connected with the Property.

B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, upon the terms and provisions set forth herein.

NOW, THEREFORE, in consideration of the above facts and for the covenants and agreements contained herein, the Parties hereto agree as follows:

TERMS

1. PURCHASE AND SALE.

1.1 Property. Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, upon the terms and conditions set forth herein.

1.2 Purchase Price.

The total purchase price for the Property is **One Million Five Hundred Fifty Thousand Dollars** and 00/100 (\$1,550,000.00) Dollars (“**Purchase Price**”).

1.3 Payment of Purchase Price. At Close of Escrow (defined below), Buyer shall pay to Seller through escrow the Purchase Price, payable in cash, by cashier’s or certified check or by wire transfer.

1.4 Withholding Requirements per R&T 18662. The Parties acknowledge that pursuant to California Revenue and Taxation Code Section 18662, Buyer is required to withhold from funds otherwise payable to Seller at Close of Escrow an amount equal to 3 1/3% of the total sales price/Purchase Price for the Property and submit such amount to the California Franchise

Tax Board, unless Buyer is relieved of such withholding requirements under the provisions of said Section 18662.

2. ESCROW.

2.1 Opening of Escrow. Within three (3) business days of this agreement being fully executed, Seller and Buyer shall open an escrow (“**Escrow**”) for the conveyance of the Property with Debbie Dekoning as the Escrow Officer at Claremont Escrow (“**Escrow Holder**”). At the opening of Escrow, Buyer shall deposit \$50,000 into Escrow (“**Deposit**”). For purposes of this Agreement, the Escrow shall be deemed open on the date Escrow Holder shall have received either an original or a copy, at Escrow Holder’s discretion, of this Agreement, fully executed by the Parties and the Deposit (“**Opening of Escrow**”). Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened.

2.2 Escrow Instructions. This Agreement constitutes the joint basic escrow instructions of Buyer and Seller for the conveyance of the Property. Either an original or a copy, at Escrow Holder’s discretion, of this Agreement, fully executed by the Parties, shall be delivered to Escrow Holder upon the Opening of Escrow. Buyer and Seller shall execute, deliver and be bound by any reasonable or customary supplemental or additional escrow instructions (“**Additional Instructions**”) of Escrow Holder or other instruments as may be reasonably required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such Additional Instructions shall not conflict with, amend or supersede any portions of this Agreement unless expressly consented or agreed to in writing by Seller and Buyer. In the event of any conflict or any inconsistency between this Agreement and such Additional Instructions, this Agreement shall govern unless otherwise specifically agreed to in writing by the Parties.

2.3 Close of Escrow. For purposes of this Agreement, “**Close of Escrow**” or “**Closing**” means the recordation of the Grant Deed (See **Exhibit B** attached) conveying the Property to Buyer (“**Grant Deed**”) in the Official Records of San Bernardino County, California, and the disbursement of funds and distribution of any other documents by Escrow Holder, all as described herein. Close of Escrow shall occur **Forty Five (45) days** following the Opening Date (“**Closing Date**”), provided that Seller and Buyer may, but shall not be obligated to, close the Escrow upon such earlier date as the Seller and Buyer mutually agree to in writing. Buyer and Seller may mutually agree to change the Closing Date by joint written notice to Escrow Holder. The Closing shall be conditioned upon satisfaction, or waiver by the Party for whose benefit the condition exists, of all conditions precedent thereto. In the event the Escrow is not in a condition to close by the Closing Date, or the “Extended Closing Date”, if any, for any reason other than the uncured breach of either Buyer or Seller, then Escrow Holder is instructed to proceed with Close of Escrow as soon as possible. *Note: The Extended Closing Date is a date beyond the original closing date, agreed to by the Buyer and Seller.*

2.4 Costs of Escrow. Buyer shall pay all costs of the Title Policy (“**Title Costs**”), and 50% of all Escrow fees, recording fees and notary fees attributable to the conveyance of the Property (collectively “**Escrow Costs**”). Seller shall pay 50% of Escrow Costs. All other costs of processing the escrow, except as specifically provided in this Agreement, shall be divided between the Parties in accordance with common escrow practices in San Bernardino County at the

discretion of the Escrow Holder. Escrow Holder shall provide an estimated closing costs statement to Buyer and Seller at least three (3) days prior to the Closing Date, or Extended Closing Date, if any. Each Party shall be responsible for payment of its own attorneys' fees with respect to the negotiation and preparation of this Agreement

2.5 Property Taxes and Assessments. Escrow Holder is authorized and instructed to comply with the following tax adjustment procedure:

2.5.1 Pay and charge Seller for any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the property;

2.5.2 In the event this escrow closes between July 1 and November 1, and current tax information is not available from title insurer, Escrow Holder is instructed to withhold from Seller's proceeds an amount equal to 120% of the prorated amount due based upon the previously fiscal year's second half tax bill. At such time that the tax information is available, Escrow Holder shall make a check payable to the County Tax Collector for Seller's prorated portion of taxes and forward same to the Buyer and shall refund any difference to the Seller. In the event the amount withheld is not sufficient to pay Seller's prorated portion of taxes due, the Seller herein agrees to immediately pay the difference.

In the event said tax information is available, Seller's taxes shall be prorated in accordance with Section 2.5.3 below.

2.5.3 From the date that tax information is available, as per Section 2.5.2, up to and including June 30th, Seller's current taxes, if unpaid, shall be prorated to date of Close of Escrow on the basis of a 365 day year in accordance with Tax Collector's proration requirements, together with penalties and interest, if said current taxes are unpaid after December 10 and/or April 10. At Close of Escrow, check payable to the County Tax Collector for Seller's prorata portion of taxes shall be forwarded to Buyer with Escrow Holder's closing statement.

2.5.4 Any taxes which have been paid by Seller, prior to Opening of Escrow, shall not be prorated between buyer and Seller, but Seller shall have the sole right, after Close of Escrow, to apply to the County Tax Collector of said county for refund. This refund would apply to the period after Buyer's acquisition, pursuant to Revenue and Taxation Code Section 5096.7.

2.6 Buyer's Conditions Precedent to Close of Escrow. The Close of Escrow and Buyer's obligation to accept title to the Property and pay the Purchase Price are subject to the satisfaction of the following-described conditions for Buyer's benefit (or Buyer's waiver thereof, it being agreed that Buyer may waive any or all of such conditions) on or prior to the Closing Date, or Extended Closing Date, if any:

2.6.1 Seller shall have tendered into Escrow all payments and documents required of it pursuant to this Agreement.

2.6.2 Seller shall have completed in a timely fashion all of its obligations that are to be completed prior to the Close of Escrow as provided in this Agreement.

2.6.3 Escrow Holder shall have received an irrevocable commitment from the Title Company to issue the Title Policy required pursuant to this Agreement, subject only to the Permitted Exceptions, as set forth in more detail in Article 3.

2.6.4 All representations and warranties of the Seller hereunder shall be true as of the Effective Date and as of the Close of Escrow and shall continue thereafter for the full statutory period.

2.6.5 All property taxes and assessments attributable to the Property shall have been paid by Seller before delinquency and shall be current as of Close of Escrow.

2.6.6 Buyer shall have approved Escrow Holder's estimated closing costs statement.

2.6.7 Buyer shall have approved the physical status of the Property as set forth in Sections 4.1-4.3 below.

2.6.8 Buyer shall have received approval from the Federal Transportation Administration, the Federal Highways Administration and/or Caltrans, as applicable.

2.7 Seller's Conditions Precedent to Close of Escrow. The Close of Escrow and Seller's obligation to convey the Property are subject to the satisfaction of the following-described conditions for Seller's benefit (or Seller's waiver thereof, it being agreed that Seller may waive any or all of such conditions) on or prior to the Closing Date, or Extended Closing Date, if any:

2.7.1 Buyer shall have tendered into Escrow all payments and documents required of it pursuant to this Agreement.

2.7.2 Buyer shall have completed in a timely fashion all of its obligations which are to be completed prior to the Close of Escrow as provided in this Agreement.

2.7.3 All representations and warranties of the Buyer hereunder shall be true as of the Effective Date and as of the Close of Escrow and shall continue for the full statutory period.

2.7.4 Seller shall have approved Escrow Holder's estimated closing costs statement.

2.8 Buyer's Payments and Documents. No less than one (1) day prior to Closing, Buyer shall pay or tender (as applicable) to the Escrow Holder the following-described funds and documents (in recordable form, as necessary):

2.8.1 The Purchase Price.

2.8.2 Funds required to pay fifty percent (50%) of costs of the Escrow Costs payable by Buyer pursuant to Section 2.4 herein.

2.8.3 Funds required to pay all sales or brokerage commissions and finder's fees payable by Buyer, if any, with respect the transaction which is the subject of this Agreement.

2.8.4 Funds required to pay any additional charges customarily charged to buyers in accordance with common escrow practices in San Bernardino County, at the discretion of Escrow Holder.

2.8.5 Certificate of Acceptance, accepting Grant Deed and consenting to recording of same ("**Certificate of Acceptance**"). See **Exhibit B** attached.

2.8.6 Preliminary Change of Ownership form. See **Exhibit C** attached.

2.8.7 Such other documents and funds required of Buyer under this Agreement and by Escrow Holder in the performance of its contractual or statutory obligations.

2.9 Seller's Payments and Documents. No less than one (1) day prior to Closing, Seller shall pay or tender (as applicable) to the Escrow Holder the following-described funds and documents (in recordable form, as necessary):

2.9.1 Funds required to pay Title Costs payable by Seller pursuant to Section 2.4 herein.

2.9.2 Funds required to pay fifty percent (50%) of the Escrow Costs payable by Seller pursuant to Section 2.4 herein.

2.9.3 Funds required to pay all sales or brokerage commissions and finder's fees payable by Seller, if any, with respect the transaction which is the subject of this Agreement.

2.9.4 Any additional charges customarily charged to Sellers in accordance with common escrow practices in San Bernardino County, at the discretion of Escrow Holder.

2.9.5 The fully executed and acknowledged Grant Deed.

2.9.6 FIRPTA Certificate and California Form 593-C.

2.9.7 Such other documents and funds required of Seller under this Agreement and by Escrow Holder in the performance of its contractual or statutory obligations.

2.10 Escrow Holder Responsibilities. Upon the Closing, Escrow Holder is authorized and instructed to:

2.10.1 Cause the satisfaction and removal of all exceptions to title to the Property representing monetary liens or encumbrances from funds otherwise payable to Seller at Close of Escrow, including, without limitation, all unpaid taxes and assessments respecting the Property which became due and payable prior to Close of Escrow and all penalties and interest, if

any, thereon. Before such payments or charges are made, Escrow Holder shall notify Seller of the sums necessary to satisfy and remove such monetary liens or encumbrances.

2.10.2 Pay, and charge Buyer and Seller, respectively, for any fees, charges and costs payable under this Agreement, including, but not limited to, Sections 2.8 and 2.9 herein. Before such payments or charges are made, Escrow Holder shall notify Buyer and Seller of the fees, charges and costs necessary to clear title and close the Escrow.

2.10.3 Prorate real property taxes and assessments, crediting and debiting the parties as appropriate, all as set forth in Section 2.5 above and as disclosed in Escrow Holder's estimated closing statement.

2.10.4 Record the Grant Deed, with Certificate of Acceptance attached thereto, and any other instruments, as appropriate, delivered through Escrow.

2.10.5 Withhold from funds otherwise payable to Seller at Close of Escrow such amount as Buyer is required to withhold therefrom pursuant to California Revenue and Taxation Code Section 18662 (i.e., 3 1/3% of the total sales price) and timely submit such sums to the California Franchise Tax Board, unless Buyer is relieved of such withholding requirements under the provisions of said Section 18662. Further, deliver to each Party copies of all such withholding form(s).

2.10.6 Disburse such other funds and deliver such other documents to the Parties entitled thereto.

2.10.7 Cause the Title Policy to be issued.

2.11 Notices. All communications from Escrow Holder to either Buyer or Seller shall be directed to the addresses and in the manner established in Section 7.1 herein for notices, demands and communications between the Buyer and Seller.

2.12 Facsimile/Counterpart Documents. In the event Buyer or Seller utilizes "facsimile" transmitted signed documents, the Parties hereby agree to accept and instruct Escrow Holder to rely upon such documents as if they bore original signatures. Buyer and Seller hereby acknowledge and agree to provide to Escrow Holder, within seventy-two (72) hours after transmission, such documents bearing the original signatures. Buyer and Seller further acknowledge and agree that facsimile documents bearing non-original signatures will not be accepted for recording and that the Parties will provide originally executed documents to Escrow Holder for such purpose. Escrow Holder is authorized to utilize documents which have been signed by Buyer and Seller in counterparts.

3. TITLE.

3.1 Condition of Title; Title Policy. It is a condition to the Close of Escrow for Buyer's benefit that fee title to the Property and the right to possession to any portion of the Property conveyed to Buyer pursuant to this Agreement shall be subject only to the Permitted Exceptions (defined below), as evidenced by the receipt by Escrow Holder of an irrevocable commitment from NoRhett Walls as the Title Officer at Stewart Title ("**Title Company**") to issue

to Buyer upon Close of Escrow its Standard Owner's Form Policy of Title Insurance ("Title Policy") in an amount equal to the Purchase Price, as adjusted, if applicable, showing title to the Property vested in Buyer, subject only to the Permitted Exceptions. The Parties shall cause the Title Company to issue the Title Policy to Buyer upon Close of Escrow. At Buyer's election and at its sole cost, Buyer may elect to obtain ALTA extended title coverage.

3.2 Permitted Exceptions. The term "**Permitted Exceptions**" as used herein shall mean the following-described conditions and exceptions to title or possession:

3.2.1 A lien to secure payment of general and special real property taxes and assessments, not delinquent.

3.2.2 A lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code accruing on or after the Close of Escrow.

3.2.3 Matters affecting the condition of title created by or with the consent of Buyer.

3.2.4 Other exceptions to title disclosed by the Title Report (defined below) which have been approved in writing by Buyer prior to the Close of Escrow.

Notwithstanding any other provision(s) in this Agreement, any exceptions to title to the Property representing monetary liens or encumbrances are hereby disapproved and deemed a Disapproved Matter, and Escrow Holder is hereby authorized and instructed to cause at Close of Escrow the satisfaction and removal of any such monetary exceptions from funds otherwise payable to Seller at Close of Escrow.

4. CONDITION OF PROPERTY.

4.1 Physical Status of the Property. Prior to Close of Escrow and pursuant to the right of entry described in Section 4.4 below, Buyer will have the right to conduct a due diligence inspection of the Property. Buyer may investigate all physical characteristics of the Property, including its status with respect to hazardous substances and materials, endangered species, geotechnical and geophysical matters, the condition of any structures and the like. If Buyer determines as a result of such investigations that conditions upon the Property render it unsuitable for Buyer's intended use, Buyer may elect to terminate this transaction. All such investigation by Buyer will be at Buyer's sole cost.

4.2 Condition of Property. The property is being sold in its as is, where condition. Seller does not warrant or guarantee the properties physical condition, nor its suitability for buyers intended use.

4.3 Due Diligence/Contingency Period. Buyer shall have thirty days (30) days after the Opening of Escrow (the "Contingency Period"). Within 10 days of opening escrow, Seller shall provide Buyer with all information on the subject Property that they may have in their possession. Upon the expiration of the Contingency Period, the Deposit shall be non-refundable to Buyer and applicable to the Purchase Price. The Buyer shall deposit the balance of the purchase

price prior to the Closing Date. The Buyer shall pay; at Buyer's sole cost and expense, for all costs associated with its Due Diligence investigation of the property, including all Environmental reports, land surveys, Phase I report, if they so choose to conduct such investigation.

At 5:00 p.m. on 30th day of escrow, if Buyer has not notified escrow in writing with instructions to cancel escrow as, Buyer shall be considered to have satisfied or waived all contingencies to the escrow and buyers deposit will be considered non-refundable to buyer for all reasons other than sellers failure to perform in conveying equitable title.

4.4 Inspections and Right of Entry. Seller hereby grants to Buyer and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property at all reasonable times prior to the Closing Date for the purpose of conducting such inspections. Buyer will defend, indemnify and hold Seller free and harmless from and against any and all claims, damages and liabilities resulting from the exercise of this right of entry so long as they do not result from Seller's negligence.

5. TERMINATION, DEFAULTS AND REMEDIES.

5.1 Exercise of Right to Terminate. In the event Buyer elects to exercise its rights to terminate this Agreement and the Escrow as provided in Sections 4.1, 7.3 or herein, Buyer may do so by providing written notice of such termination to Seller and Escrow Holder prior to Close of Escrow. In such event, Buyer shall pay all Escrow Holder and Title Company termination fees and charges (collectively, "**Termination Costs**"). Upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for the obligation of Party so terminating to pay Termination Costs as provided herein, shall cease and terminate.

5.2 Buyer's Default. In the event all of the conditions precedent to Buyer's obligations hereunder have been satisfied or waived and Buyer has not elected to terminate in accordance with any rights described in Section 5.1 above, and in the further event that Buyer is materially in default and fails to cure such default within a commercially reasonable period of time following written notice from Seller, Seller may elect to terminate this Agreement and the Escrow by written notice to Buyer and Escrow Holder. In such event, Buyer shall pay all Termination Costs. Upon such termination, all obligations and liabilities of the Parties hereunder shall terminate.

5.3 Seller's Default. In the event Seller breaches any obligation hereunder which Seller is to perform prior to the Close of Escrow, and fails to cure such breach within a reasonable period of time determined at the sole discretion of Buyer, then, in addition to pursuing any other rights or remedies which Buyer may have at law or in equity, Buyer may, at Buyer's option, (i) terminate this Agreement and the Escrow by giving notice, in writing, prior to Close of Escrow, of such termination to Seller and Escrow Holder; or (ii) initiate an action for specific performance of this Agreement. Should Buyer elect to terminate this Agreement and the Escrow as provided herein, then Seller shall pay all Termination Costs, and upon such termination, all obligations and liabilities of the Parties under this Agreement, excepting for Seller's obligation to pay Termination Costs as provided herein, shall cease and terminate.

5.4 Return of Funds and Documents; Release of Liability as to Escrow Holder.

In the event Escrow Holder receives a notice, in writing, prior to Close of Escrow, from Buyer or Seller of its election to terminate the Escrow as provided in Article 6, then Escrow Holder shall promptly terminate the Escrow and return all funds, less Termination Costs, as appropriate, and documents to the Party depositing the same. The Parties hereby release Escrow Holder, and shall hold Escrow Holder free and harmless, from all liabilities associated with such termination excepting for Escrow Holder's obligations to return funds as provided herein.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer that the following statements are true and correct as of the Effective Date, and shall be true and correct as of Close of Escrow, and the truth and accuracy of such statements shall constitute a condition precedent to all of Buyer's obligations under this Agreement:

6.1.1 Authority. Seller has full power and authority to own, sell and convey the Property to Buyer and to perform its obligations pursuant to this Agreement. This Agreement and all other documents delivered by Seller to Buyer now or at Close of Escrow have been or will be duly executed and delivered by Seller and are or will be legal, valid and binding obligations of Seller, sufficient to convey to Buyer good and marketable title to the Property and are enforceable in accordance with their respective terms.

6.1.2 No Unrecorded Possessory Interests; No Agreements or Undertakings. To Seller's current actual knowledge, there are no agreements for occupancy in effect for the Property (other than the Tenant Leases, if any) and no unrecorded possessory interests or unrecorded agreements that would adversely affect Buyer's title to or use of the Property. Seller will not enter into any agreements or undertake any obligations prior to Close of Escrow which will in any way burden, encumber or otherwise affect the Property without the prior written consent of Buyer, including, without limitation, any agreements for occupancy for the Property.

6.1.3 Hazardous Materials. Pursuant to California Health and Safety Code Section 25359.7, Seller hereby confirms to Buyer that to the best of Seller's knowledge, no release of Hazardous Materials (as defined below) has come to be located upon or under the Property. Seller further warrants to Buyer that to the best of Seller's knowledge, the Property and any contiguous real property owned by Seller is not in violation of any federal, state or local statute, regulation or ordinance relating to industrial hygiene or to environmental conditions on, under or about the Property, including, without limitation, soil and groundwater conditions underlying the Property. Neither Seller nor any other person or predecessor in interest has used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any "**Hazardous Materials**" as defined in any state, federal or local statute, ordinances, rules or regulation applicable to the Property, including without limitation any flammable materials, explosives, radioactive materials, hazardous or contaminated materials or substances, toxic or noxious materials, substances or related materials or substances.

6.1.4 Litigation. There are no claims, actions, suits or proceedings continuing, pending or threatened against or affecting Seller or the Property, or involving the validity or enforceability of this Agreement or of any other documents or instruments to be

delivered by Seller at Close of Escrow, at law or in equity, or before or by any federal, state, municipal or other governmental department, board, commission, bureau, Buyer or instrumentality. Seller is not subject to or in default under any notice, order, writ, injunction, decree or demand of any court or any governmental department, board, commission, bureau, Buyer or instrumentality.

6.1.5 No Breach. The execution and delivery of this Agreement and the consummation of the transaction contemplated hereby will not violate or result in any breach of or constitute a default under or conflict with or cause any acceleration of any obligation with respect to any provision or restriction of any lien, lease, agreement, contract, instrument, or, according to Seller's knowledge, any order, judgment, award, decree, statute, regulation or ordinance, or any other restriction of any kind or character to which Seller is a party or by which Seller or the Property are bound.

6.1.6 No Condemnation or Other Proceedings. Seller is unaware of any contemplated condemnation of the Property or any portion thereof by any other public entity.

6.2 Survival of Representations and Warranties. The covenants, representations and warranties of Seller under this Agreement shall be true on and as of the Close of Escrow and shall survive the recordation of the Grant Deed and the Close of Escrow. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and litigation expenses, which Buyer may reasonably incur or sustain by reason of or in connection with any misrepresentation made by Seller pursuant to this Article 8.2.

7. OTHER.

7.1 Notices and Demands. All notices or other communications required or permitted between the Parties hereunder shall be in writing, and shall be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by facsimile transmission with confirmation of receipt, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service), addressed to the Party to whom the notice is given at the addresses provided below, subject to the right of any Party to designate a different address for itself by notice similarly given. Any notice so given by registered or certified United States mail shall be deemed to have been given on the third business day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by personal delivery, facsimile transmission or courier service, shall be deemed given upon receipt, rejection or refusal of the same by the Party to whom the notice is given. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice or other communication sent.

To Buyer: CITY OF MONTCLAIR
 Attn: Edward C. Starr, City Manager
 5111 Benito Street
 Montclair, CA 91763
 Telephone: (909) 626-8571

With Copy to: BEST BEST & KRIEGER LLP
 Attn: Mark Easter, Esq.
 3750 University Avenue
 Riverside, CA 92501
 Telephone: (951) 826-8237
 Facsimile: (951) 686-3083

To Seller: PENNELL HOLDING COMPANY, LTD.
 Attn: Barbara Ernestine Pennell, CEO
 581 N. Laurel Avenue
 Upland, California 91786
 Facsimile: _____
 Telephone: _____

To Escrow Holder: Claremont Escrow
 Attn: Debby Dekoning, Escrow Officer
 405 W Foothill Blvd
 Claremont, CA 91711
 Telephone: (909) 399-1171
 Facsimile: _____

To Title Company: Stewart Title
 Attn: NoRhett Walls, Title Officer

 Telephone: _____
 Facsimile: _____

7.2 Indemnity by Seller. Seller hereby agrees, after the Close of Escrow, at Seller's sole cost and expense, to indemnify, protect, defend (with counsel of Buyer's choice), and hold Buyer, its successors and assigns, officers and/or directors, harmless from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses (including, without limitation, attorneys' and experts' reasonable fees and costs) of any kind or nature whatsoever which may at any time be imposed upon, incurred or suffered by, or asserted or awarded against, Buyer, or Buyer's successors and assigns, officers and/or directors relating to or arising from (i) the Property or Seller's ownership or operation thereof on or before the Close of Escrow, (ii) the use on or before the Close of Escrow of the Property by Seller or any third party, including, without limitation, any tenant, invitee or licensee of Seller, (iii) any breach of any covenant, agreement, representation or warranty of Seller contained in this Agreement; (iv) the presence, use, handling,

storage, disposal or release on or before the Close of Escrow of Hazardous Materials on, under or about the Property caused by Seller; and (v) the Seller's violation of any federal, state or local law, ordinance or regulation, occurring or allegedly occurring with respect to the Property prior to the Close of Escrow. This indemnity by Seller herein contained shall survive the Close of Escrow, and the recordation of the Grant Deed.

7.3 Possession; Risk of Loss. Buyer shall be entitled to sole possession of the Property immediately upon Close of Escrow, subject to Tenant Leases accepted by Buyer in the manner provided in this Agreement. All risk of loss or damage to the Property will pass from the Seller to the Buyer at the Close of Escrow. In the event that material loss or damage occurs to the Property prior to the Close of Escrow, Buyer may terminate this Agreement as provided in Section 5.1 herein.

7.4 Brokers and Sales Commissions. Seller and Buyer shall each deposit with Escrow Holder for distribution upon Close of Escrow such funds as may be required to pay all sales or brokerage commissions and finder's fees, if any, for which that Party has incurred any obligation with respect to the transaction which is the subject of this Agreement. Seller and Buyer shall each indemnify, protect, defend and hold harmless the other Party and its successors hereunder from and against any and all claims, liabilities, obligations, losses, damages, costs and expenses, including, without limitation, reasonable attorney's fees, court costs and litigation expenses, arising from or in connection with any sales or brokerage commissions, finder's fees or other commissions which are (or are claimed to be) payable in connection with the transaction which is the subject of this Agreement by reason of the actions (or alleged actions) of such indemnifying Party.

8. MISCELLANEOUS.

8.1 Survival of Covenants. The covenants, representations and warranties of both Buyer and Seller set forth in this Agreement shall survive the recordation of the Grant Deed and the Close of Escrow.

8.2 Required Actions of Buyer and Seller. Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use their best efforts to accomplish the Close of Escrow in accordance with the provisions hereof.

8.3 Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

8.4 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

8.5 Captions. Any captions to, or headings of, the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

8.6 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to, any person or entity other than the Parties.

8.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference.

8.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

8.9 Applicable Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties and venue hereto, shall be governed by the laws of the State of California. Any and all legal actions sought to enforce the terms and provisions of the Agreement shall be brought in the courts of the County of San Bernardino.

8.10 Assignment. Buyer shall have the right, in its sole discretion, to assign this Agreement, and any right or obligation herein, to any party of its choice without the prior consent or approval of Seller. Seller shall not assign this Agreement, or any right or obligation herein, to any party without the prior written consent of Buyer, which consent may be given or withheld in Buyer's sole discretion.

8.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

8.12 Severability. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

8.13 Construction. This Agreement will be liberally construed to effectuate the intention of the Parties with respect to the transaction described herein. In determining the meaning of, or resolving any ambiguity with respect to, any word, phrase or provision of this Agreement, neither this Agreement nor any uncertainty or ambiguity herein will be construed or resolved against either Party (including the Party primarily responsible for drafting and preparation of this Agreement), under any rule of construction or otherwise, it being expressly understood and agreed that the Parties have participated equally or have had an equal opportunity to participate in the drafting thereof.

8.14 Legal Fees. Each Party shall be responsible for payment of its own attorney's fees with respect to the negotiation and preparation of this Agreement and processing of the escrow. In the event of the bringing of any action or proceeding to enforce or construe any of the provisions of this Agreement, the prevailing Party in such action or proceeding, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other Party all costs and expenses of suit, including actual attorney's fees.

8.15 Fees and Other Expenses. Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement.

8.16 Entire Agreement. This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to an employee, officer, agent or representative of either Party, shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

8.17 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date(s) set forth below next to their respective signatures.

[Signatures on the following pages]

SIGNATURE PAGE TO
AGREEMENT OF PURCHASE AND SALE
AND JOINT ESCROW INSTRUCTIONS

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below next to their respective signatures. When this Agreement is executed by the final party it shall become effective (“**Effective Date**”).

BUYER:

CITY OF MONTCLAIR,
a municipal corporation

By: _____
Edward C. Starr
City Manager

Date: _____

ATTEST:

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: _____
Special Counsel for City of Montclair

Date: _____

SELLER:

By: _____
Barbara Ernestine Pennell
Chief Executive Officer

Date: _____

ESCROW AGENT:

The undersigned Escrow Holder hereby accepts the foregoing Agreement of Purchase and Sale and Joint Escrow Instructions, agrees to act as Escrow Holder under this Agreement in strict accordance with its terms, agrees to insert as the "Agreement Date" on page 1 hereof, if not otherwise dated, the latest date this Agreement was signed by Seller and Buyer and delivered to Escrow Holder, and agrees to comply with the applicable provisions of the Internal Revenue Code with respect to the transactions contemplated hereby.

CLAREMONT ESCROW

By _____

Its _____

Date: _____, 2021

LIST OF EXHIBITS

- Exhibit A - Legal Description
- Exhibit B - Grant Deed
- Exhibit C - Preliminary Change of Ownership Form – San Bernardino County

EXHIBIT "A"
LEGAL DESCRIPTION

Legal Description

The land referred to herein is situated in the State of California, County of San Bernardino, City of Montclair, described as follows:

Parcel 3 and that portion of Parcel 1 of Parcel Map No. 14479, as shown by map on file in Book 172 Page(s) 16 and 17, of Parcel Maps, records of San Bernardino County, California, described as follows:

Beginning at the northwest corner of said Parcel 1; thence south 89E48'31" East, 121.49 feet; thence south 00E18'48" East, 49.67 feet; thence north 89E48'31" West, 39.61 feet; thence south 00E11'29" West, 14.83 feet; thence north 89E48'31" West, 82.33 feet; thence north 00E11'29" East, 64.50 feet to the Point of Beginning.

Note: Said land is described and delineated as Parcel B of that certain certificate approving a Lot Line Adjustment No. 95-1 recorded April 6, 1995 as Instrument No. 95-107451 of Official Records.

Assessor Parcel Nos.: 1007-393-04 & 1007-681-13

EXHIBIT “B”
GRANT DEED

[Attached]

RECORDING REQUESTED BY AND

WHEN RECORDED RETURN TO:

CITY OF MONTCLAIR
5111 Benito Street
Montclair, CA 91763

FREE RECORDING:

This instrument is for the benefit of the City of Montclair, and is entitled to be recorded without fee or tax. (Govt. Code 6103, 27383 and Rev. & Tax Code 11922)

APNs: 1007-393-04 & 1007-681-13

Above Space for Recorder's Use

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **PENNELL HOLDING COMPANY, LTD.**, a California corporation (hereinafter referred to as "**Grantor**"), does hereby GRANT and CONVEY to **CITY OF MONTCLAIR, a municipal corporation** (hereinafter referred to as "**Grantee**") a fee interest in the following described real property (the "**Property**") situated in the City of Montclair, County of San Bernardino, State of California:

Parcel 3 and that portion of Parcel 1 of Parcel Map No. 14479, as shown by map on file in Book 172 Page(s) 16 and 17, of Parcel Maps, records of San Bernardino County, California, described as follows:

Beginning at the northwest corner of said Parcel 1; thence south 89E48'31" East, 121.49 feet; thence south 00E18'48" East, 49.67 feet; thence north 89E48'31" West, 39.61 feet; thence south 00E11'29" West, 14.83 feet; thence north 89E48'31" West, 82.33 feet; thence north 00E11'29" East, 64.50 feet to the Point of Beginning.

Note: Said land is described and delineated as Parcel B of that certain certificate approving a Lot Line Adjustment No. 95-1 recorded April 6, 1995 as Instrument No. 95-107451 of Official Records.

Assessor Parcel Nos.: 1007-393-04 & 1007-681-13

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on the date set forth below.

Dated: _____

GRANTOR:

PENNELL HOLDING COMPANY, LTD.,
a California corporation

By: _____
Barbara Ernestine Pennell
Chief Executive Officer

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.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On _____, 2021,
before me, _____,
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

personally appeared _____,
Name of Signer(s)

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

- Partner(s) Limited General
Attorney-In-Fact
Trustee(s)
Guardian/Conservator
Other:

Title or Type of Document
Number Of Pages
Date Of Document

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

Signer(s) Other Than Named Above

CITY OF MONTCLAIR

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed to which this Certificate of Acceptance is attached:

From: **PENNELL HOLDING COMPANY, LTD.**, a California corporation (“**Grantor**”)

To: **CITY OF MONTCLAIR**, a municipal corporation (“**Grantee**”)

Said Grant Deed is hereby accepted by the undersigned officer on behalf of Grantee pursuant to authority conferred by the Grantee’s governing body, and Grantee hereby consents to recordation of said Grant Deed.

Dated: _____

CITY OF MONTCLAIR, a municipal
corporation

By: _____
Edward C. Starr, City Manager

EXHIBIT “C”

PRELIMINARY CHANGE OF OWNERSHIP FORM – SAN BERNARDINO COUNTY



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** PDT175
SECTION: CONSENT - AGREEMENTS **DEPT.:** POLICE
ITEM NO.: 4 **PREPARER:** B. VENTURA
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-80 WITH FLOCK GROUP INC. FOR A
2-YEAR LEASE FOR 40 AUTOMATED LICENSE PLATE READER CAMERAS

CONSIDER AUTHORIZING A \$110,000 APPROPRIATION FROM THE FEDERAL ASSET FORFEITURE FUND TO PAY COSTS ASSOCIATED WITH AGREEMENT NO. 21-80

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-80 with Flock Group Inc. for a 2-year lease for 40 automated license plate reader (ALPR) cameras, and to authorize a \$110,000 appropriation from the Federal Asset Forfeiture Fund to pay the costs associated with Agreement No. 21-80. Proposed Agreement No. 21-80 has been reviewed by the City Attorney and is attached for City Council review and consideration.

BACKGROUND: Grand theft auto is one of Montclair's fastest-growing and consistent crimes. More than 409 vehicles have been reported and/or recovered in Montclair this year—26 in November alone.

Auto theft not only deprives owners of the use of their vehicles, but also provides criminals with a means to commit more crimes in a vehicle that does not belong to them. For this reason, gang-related crimes are often committed with the use of stolen automobiles. Focusing proactive enforcement efforts on auto theft often uncovers other criminal activities and prevents other serious crimes.

ALPR technology has been used by police agencies to locate stolen vehicles and solve other crimes where an automobile has been used. ALPR technology has continued to evolve and become less cost-prohibitive. Traditional ALPR systems included expensive fixed camera locations or mobile devices mounted in patrol cars. The Montclair Police Department has deployed mobile ALPRs in the past; however, these devices have reached their end-of-life and are no longer serviceable.

The Flock Safety ALPR operating system is a deployment of cameras throughout an area to provide greater coverage and more detailed information for law enforcement. The Flock lease proposal includes 40 cameras, which can be spread throughout the City in high-crime areas. Flock cameras capture date, time, location, license plate (state, partial, paper, and no plate), vehicle details (type and color), as well as objects (bicycles, animals, and people), whereas other ALPR companies capture license plates only.

Flock Group Inc. presented staff with a desirable approach to deploying ALPR cameras throughout the community. Unlike other fixed or mobile ALPR devices, the Flock system provides the ability to cover more area of the City with system maintenance provided by the vendor rather than City staff. The Flock program is an all-inclusive model for deploying the ALPR cameras. Flock Group Inc. is the sole manufacturer and developer of the Flock Safety camera. There are several other differences between Flock and other ALPR companies. Most notably, Flock is the only manufacturer and service provider that leases ALPR services. Other companies require the purchase of equipment and the cameras.

The key benefits of Flock include an annual flat-rate lease of \$2,500 per camera, a one-time \$250 installation fee per camera, which is wireless, free of infrastructure setup, and is solar powered. Included is a life-time warranty, Criminal Justice Information Services (CJIS) compliant cloud-based hosting, unlimited user licenses, ongoing software enhancements, camera setup, mounting, shipping, handling, and a cellular connection. With the Flock lease program, the City avoids maintaining costly equipment at the end of the agreement period, which could require replacement.

PURCHASE	LEASE FEE 2021-22	LEASE FEE 2022-23
Flock Group Inc.	\$110,000	\$100,000

The Flock camera system is being utilized by more than 210 police departments across the U.S. Other local communities including Pomona, Ontario, Upland, and San Dimas have chosen the Flock system. At the end of the two-year lease period, staff will assess the benefits of the program and determine whether to recommend continuing the Flock camera program.

Staff researched other companies to compare capabilities and costs. Competing agencies, such as Vigilant, only have the capability of reading license plates and do not have machine learning technology. Vigilant and other companies require extensive infrastructure needs such as power and fiber optics, which would increase costs by hundreds of thousands of dollars more than Flock with fewer capabilities.

FISCAL IMPACT: If authorized by the City Council, funding for Agreement No. 21-80 would result in an appropriation from Asset Forfeiture Federal Fund 1144 in the amount of \$110,000. Subsequent annual fees of \$100,000 for the Flock Camera System would be budgeted for in the Police Department’s Budget starting with Fiscal Year 2022-23.

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

1. Approve Agreement No. 21-80 with Flock Group Inc. for 40 automated license plate reader cameras.
2. Authorize an \$110,000 appropriation from the Federal Asset Forfeiture Fund to pay costs associated with Agreement No. 21-80.

**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. ("Flock") and the customer identified below ("Agency") (each of Flock and Customer, a "Party"). This order form ("Order Form") hereby incorporates and includes the "GOVERNMENT AGENCY AGREEMENT" attached (the "Terms") which describe and set forth the general legal terms governing the relationship (collectively, the "Agreement"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the "Effective Date").

Agency: CA - Montclair PD Legal Entity Name:	Contact Name: Brian Ventura
Address: 4870 Arrow Hwy Montclair, California 91763	Phone: (909) 448-3603 E-Mail: bventura@cityofmontclair.org
Expected Payment Method:	Billing Contact: (if different than above)
Initial Term: 24 months Renewal Term: 24 months	Billing Term: Annual payment due Net 30 per terms and conditions

Name	Price	QTY	Subtotal
Flock Falcon Camera	\$2,500.00	40.00	\$100,000.00
Implementation Fee	\$250.00	40.00	\$10,000.00

(Includes one-time fees)


Year 1 Total \$110,000.00


Recurring Total: \$100,000.00

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

By: 
Name: Garrett Langley
Title: CEO
Date: 12/6/21

By: 
Name: Alex Latraverse
Title: CRO
Date: 12/6/21

CITY OF MONTCLAIR

Javier John Dutrey
Mayor

Date
ATTEST:

Andrea M. Myrick
City Clerk
APPROVED AS TO FORM:

Diane E. Robbins
City Attorney

GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block below (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Service creates images and recordings of suspect vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

WHEREAS, Agency desires to purchase, use and/or have installed access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock System (where there is an investigative purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, because Footage is stored for no longer than (thirty) 30 days in compliance with Flock’s records retention policy, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the purpose of crime awareness and prevention by police departments and archiving for evidence gathering (“**Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “**Agency Data**” will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. “**Agency Hardware**” shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term “**Agency Hardware**” excludes the Embedded Software.

1.3 “**Authorized End User(s)**” shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 “**Documentation**” will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 “**Embedded Software**” will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 “**Flock IP**” will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 “**Footage**” means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 “**Hardware**” or “**Flock Hardware**” shall mean the Flock cameras, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term “**Hardware**” excludes the Embedded Software.

1.9 “**Implementation Fee(s)**” means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 “**Installation Services**” means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 “**Services**” or “**Flock Services**” means the provision, via the Web Interface, of Flock’s software application for automatic license plate detection, searching image records, and sharing Footage.

1.12 “**Support Services**” shall mean Monitoring Services, as defined in Section 2.9 below.

1.13 “**Unit(s)**” shall mean the Agency Hardware together with the Embedded Software.

1.14 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.15 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the Order Form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of

the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. WARRANTIES PROVIDED BY SAID THIRD PARTY SERVICE PROVIDERS ARE THE AGENCY'S SOLE AND EXCLUSIVE REMEDY AND FLOCK'S SOLE AND EXCLUSIVE LIABILITY WITH REGARD TO SUCH THIRD-PARTY SERVICES, INCLUDING WITHOUT LIMITATION HOSTING THE WEB INTERFACE. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sub-licensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency's in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

2.4 Usage Restrictions. The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture ("**Permitted Purpose**"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

2.5 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.6 Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency 's and any Authorized End User's access to any portion or all of the Flock IP if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency 's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "***Service Suspension***"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency 's direct actions or by the actions of parties associated with the Agency , the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency 's account that have been impacted.

2.7 Installation Services.

2.7.1 Designated Locations. For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock and Agency must mutually agree on the location (mounting site or pole), position and angle of the Units (each Unit location so designated by Agency, a "***Designated Location***"). Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in identifying the choices for the Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. Designated Locations that are suggested by Flock and accepted by Agency without alteration will be known as Flock Designated Locations. After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Agency, any subsequent changes to the deployment plan ("***Reinstalls***") requested by the Agency will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have final discretion on installation and Reinstalls.

2.7.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. The “*Agency Installation Obligations*” include, to the extent required by the deployment plan, but are not limited to electrical work to provide a reliable source of 120V AC power that follow Flock guidelines and comply with local regulations if adequate solar exposure is not available. Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use, or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, etc., if necessary), such costs to be approved by the Agency. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

2.7.3 Flock's Obligations. Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are selected by Agency. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency can opt out of Flock's access to Footage after the initial installation which would waive Flock's responsibility to ensure such action was successful. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

2.7.4 Security Interest. Flock Hardware shall remain the personal property of Flock and will be removed upon the termination or expiration of this Agreement. Agency agrees to perform all acts which may be necessary to assure the retention of title of the Hardware by Flock. Should Agency default in any payment for the Flock Services or any part thereof or offer to sell or auction the Hardware, then Agency authorizes and empowers Flock to remove the Hardware or any part thereof. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right. In the event of natural expiration of this Agreement, Flock shall remove Flock Hardware at no additional cost to Agency.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless. Any additional expenses incurred by Flock as a result of the discovery or presence of hazardous material or hazardous conditions shall be the responsibility of Agency and shall be paid promptly upon billing.

2.9 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at support@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support. If Agency chooses to self-install Hardware or install Hardware on a mobile location, Flock shall make reasonable commercial efforts to provide On-Site Services, if permissible. Agency shall not be entitled to reimbursement, tolling, or credit for any lapse in Services associated with the Unit malfunction due to installation on mobile locations (i.e. trailers). Agency waives any warranties hereunder for any self-installed Hardware, and Flock shall not be liable for failure to respond to any maintenance requests for self-installed Hardware. Agency shall be subject to Reinstall Fees for re-positioning Units on mobile locations, or subsequent installation on Flock or other stationary poles.

2.10 Special Terms. From time to time, Flock may offer certain "Special Terms" related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency's consent. To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.10 Changes to Platform. Flock Safety may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock Safety's products or services to its Agency s, (b) the competitive strength of, or market for, Flock Safety's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Upon creation of a User ID, Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to

anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. To the extent allowed by the governing law of the state mentioned in Section 10.6, or if no state is mentioned in Section 10.6, by the law of the State of California, Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses, including without limitation costs and attorneys' fees, in connection with any claim or action that arises from an alleged violation of the foregoing, Agency's installation obligations, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. This provision is subject to any obligations under FOIA and state-specific Public Records Acts. Each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Agency Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently

developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data. Agency and Non-Agency End User Data. As between Flock and Agency, all right, title and interest in the Agency Data and Non-Agency End User Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and Non-Agency End User Data and perform all acts with respect to the Agency Data and Non-Agency End User Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data and Non-Agency End User Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Flock and Agency, Agency is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Agency Data and Non-Agency End User Data. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any

personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data and Non-Agency End User Data input into the Services (the “*Aggregated Data*”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other marketing, development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data and Non-Agency End User Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein.

5. PAYMENT OF FEES

5.1a Wing Fees. For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form, together the “*Initial Fees*”) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card.

5.1b Falcon Fees. For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form, together the “*Initial Fees*”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 30th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30th day following receipt of invoice.

5.2 Changes to Fees. Flock reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice.

Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection, and may result in immediate termination of Service. Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income.

6. TERM AND TERMINATION

6.1a **Wing Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). The Initial Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form* (each, a "**Renewal Term**", and together with the Initial Term, the "**Service Term**") *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.1b **Falcon Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the "**Initial Term**"). The Initial Term shall commence upon first installation and validation of a Unit. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the length set forth on the Order Form* (each, a "**Renewal Term**", and together with the Initial Term, the "**Service Term**") *unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 **Termination for Convenience.** At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Falcon Camera (Flock Hardware). Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination.

6.3 **Termination.** In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid Fees for Services not received due to such termination.

6.5 No-Fee Term. For the Term of this Agreement, Flock will provide Agency with complimentary access to ‘hot-list’ alerts, which may include ‘hot tags’, stolen vehicles, Amber Alerts, etc. (“*No-Fee Term*”). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days’ notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days’ notice.

6.6 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Agency must first make commercially reasonable efforts to address the problem by contacting Flock’s technical support as described in Section 2.9 above. If such efforts do not correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Flock agrees to replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Agency Hardware.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 above if any of the following exclusions apply: (a) misuse of the Flock Hardware, Agency Hardware or Embedded Software in any manner, including operation of the Flock Hardware, Agency Hardware or Embedded Software in any way that does not strictly comply with any applicable specifications, documentation, or other restrictions on use provided by Flock or the Agency Hardware manufacturer; (b) damage, alteration, or modification of the Agency Hardware, Flock Hardware or Embedded Software in any way which would cause Agency Hardware, Flock Hardware or Embedded Software to malfunction; or (c) combination of the Agency Hardware or Embedded Software with software, Agency Hardware or other technology that was not expressly authorized by Flock.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean

and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF CALIFORNIA.

7.5 Insurance. Flock and Agency will each maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of their business risk. Certificates of Insurance will be provided upon request.

7.6 Force Majeure. Flock Safety is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC

DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF CALIFORNIA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK’S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Except for Flock’s willful acts, Agency agrees to pay for Flock’s attorneys’ fees to defend Flock for any alleged or actual claims arising out of or in any way related to the No-Fee Term.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock’s suppliers.

8.4 Indemnity. Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of Section 3.2, a breach of this Agreement, Agency’s Installation Obligations, Agency’s sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency’s use of the Services, Flock Hardware, Agency Hardware and any Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency’s use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data and Non-Agency End User Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency’s consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to store the Agency Data or the Non-Agency End User

Data, Agency agrees to preserve and securely store this data on Flock's behalf so that Flock can delete the data from its servers and, should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 Assignment. This Agreement is not assignable, transferable or sub licensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

10.3 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 Costs and Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.6 Governing Law; Venue. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. To the extent that the arbitration language below does not apply, the federal and state courts sitting in the State of California will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this Agreement. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement. Any dispute arising out of, in connection with, or in relation to this agreement or the making of validity thereof or its interpretation or any breach thereof shall be determined and settled by arbitration in California by a sole arbitrator pursuant to the rules and regulations then obtaining of the American Arbitration Association and any award rendered therein shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of

the forum, state or federal, having jurisdiction. The service of any notice, process, motion or other document in connection with an arbitration award under this agreement or for the enforcement of an arbitration award hereunder may be effectuated by either personal service or by certified or registered mail to the respective addresses provided herein.

10.7 Publicity. Unless otherwise indicated on the Order Form, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.8 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.9 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

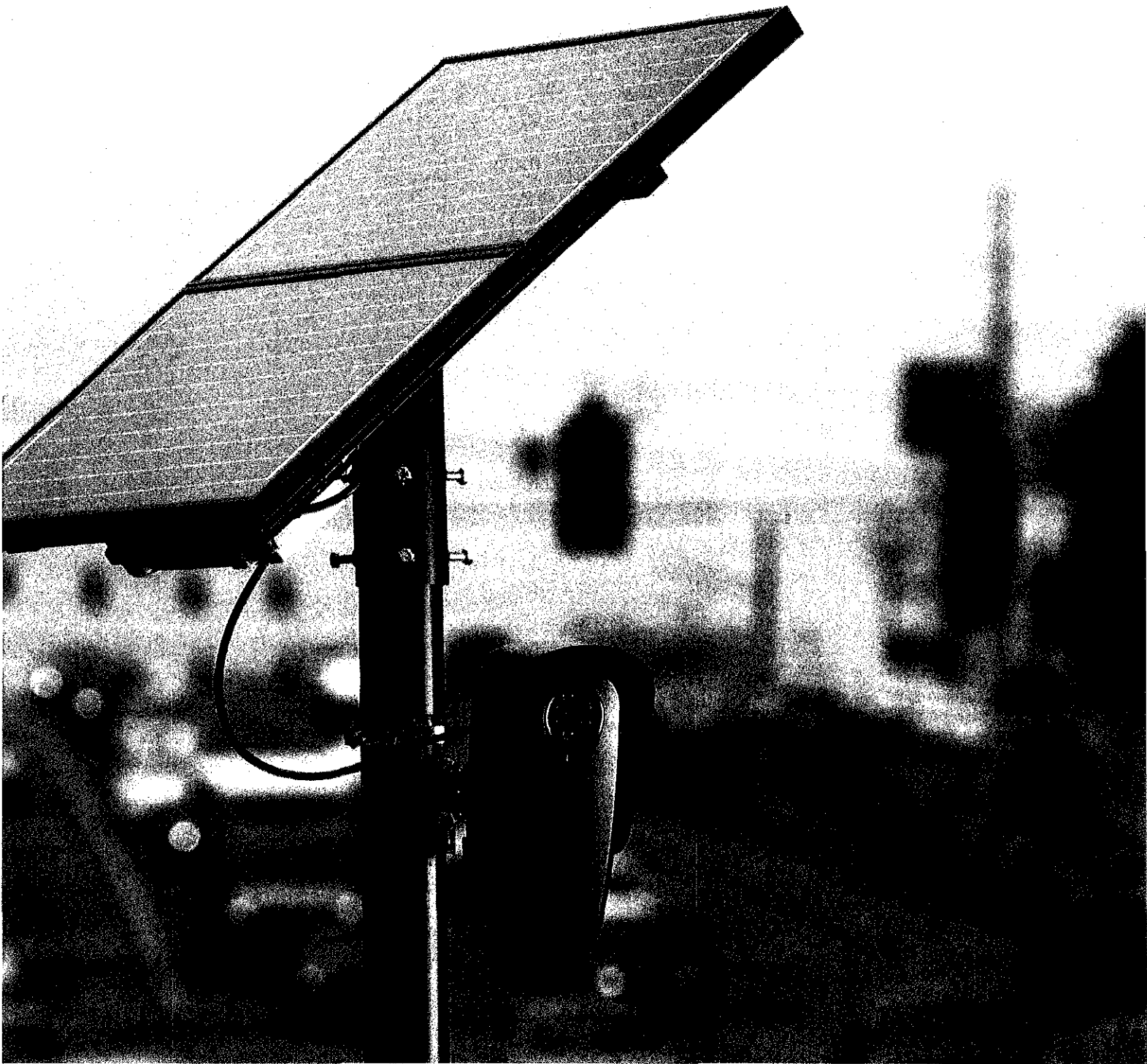
10.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.11 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.12 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

flock safety

Let's defeat crime together.™



CUSTOMER IMPLEMENTATION GUIDE

LAW ENFORCEMENT

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IMPLEMENTATION TIMELINE


This timeline provides general guidance and understanding of your installation process. While we typically complete installations 6-8 weeks after locations have been finalized, delays can occur as noted in the timeline below:

REVIEW LOCATION	<p>CONFIRM CAMERA LOCATIONS WITH YOUR SALES REPRESENTATIVE</p> <p>Flock: Your Sales representative will present several viable options for camera locations Customer: Review Deployment Plan & approve camera locations Please Note: If Public Works is required to move forward, please obtain approval.</p>
FINALIZE LOCATION	<p>PREPARE FOR FINALIZED CAMERA LOCATIONS</p> <p>Flock: Confirm Deployment Plan and signed agreement. Flock will move forward with next steps for locations that don't need permits (minimum 10 locations needed to move forward with partial installation) Customer: Prepare the below items, as needed</p> <ul style="list-style-type: none"> • If <u>permits</u> are required, begin application process • If cameras will be AC-powered, hire an <u>electrician/street department</u>
STEP 1	<p>CONDUCT ON-SITE SURVEY & PLACE FLAGS:</p> <p>Flock: Flock technician conducts site survey to (1) evaluate solar or power access, (2) check line of sight to the road, and (3) evaluate cellular service in the area. When the technician deems the locations suitable, s/he will place a white flag at each spot. Please Note: If the initially determined locations don't meet Flock standards, we will evaluate a new location, obtain customer approval, and redo a site survey. This may push timeline for installation.</p>
STEP 2	<p>CALL 811</p> <p>Flock: Flock Safety will coordinate with Call 811 to mark each camera location for underground utilities within a 10-foot radius. Please Note: Call811 is a government service, so turnaround times may vary and is outside of Flock control.</p>
STEP 3	<p>SCHEDULE INSTALLATION</p> <p>Flock: Flock will (1) ship any site specific materials that the technician does not have locally (2) schedule the installation date.</p>
STEP 4	<p>INSTALL & VALIDATE CAMERAS</p> <p>Flock: After installation, your Customer Success Manager will confirm that cameras are capturing footage well and functioning properly. They will then give you full access to the system along with helpful training resources.</p>
ONGOING AS	<p>FINALIZE ANY INSTALLATION NEEDS</p> <p>Flock: While we typically complete installations within 4 weeks of finalizing locations, delays may occur due to external factors. In these instances, we will continue to work through this process until your cameras are fully installed and operational.</p>

IMPLEMENTATION TEAM

FLOCK TEAM	HOW WILL THEY SUPPORT YOU
 <p data-bbox="289 835 545 905">Customer Success Manager</p>	<p data-bbox="708 506 1320 569">Your Customer Success Manager is your strategic partner for your lifetime as a Flock customer.</p> <p data-bbox="708 600 1338 753">They will be your guide through the installation process. After install, they will help you understand how best to leverage the Flock Safety tool to solve crime. You should reach out to them when you want to discuss:</p> <ul data-bbox="805 760 1312 947" style="list-style-type: none"> • Training • Benefits of features • Best practices for getting relevant data • Opportunities to expand the security network in your area • Feedback on your partnership with Flock
 <p data-bbox="272 1318 574 1352">Flock Safety Support</p>	<p data-bbox="708 1010 1354 1129">The Flock Safety Support team is committed to answering all your day-to-day questions as quickly as possible. To get in touch with support, simply email support@flocksafety.com. Support can help you:</p> <ul data-bbox="805 1136 1224 1352" style="list-style-type: none"> • Request camera maintenance • Troubleshoot online platform • Contract / Billing questions • Update account information • Camera Sharing questions • Quick “How to” questions in your Flock Account
 <p data-bbox="250 1734 594 1808">Product Implementation Specialist</p>	<p data-bbox="708 1419 1287 1482">Your Product Implementation Specialist is your technical product expert.</p> <p data-bbox="708 1488 1299 1608">They will help translate your goal for using Flock Safety cameras into a technical plan that can be executed and enable you to solve crime. Your specialist will work with you to:</p> <ul data-bbox="805 1614 1365 1866" style="list-style-type: none"> • Review the cameras in your deployment • Ensure that the deployment plan is set up for success from a technological standpoint in addition to meeting your goals for the product • If any of your locations require permits, a member of the Product Implementation team will assist you in packaging your application(s).

IMPLEMENTATION TEAM

 <p>Field Operations Team</p>	<p>The Field Operations team is responsible for the physical installation and maintenance of cameras and associated equipment provided by Flock. This includes a large team of technicians, schedulers, and many others involved in ensuring the delivery of your product.</p> <p>They take the technical plan you finalized with Product Implementation and work closely with other teams at Flock to make sure that your cameras are installed quickly and safely, and in a way that maximizes the opportunity to solve crime at a specific location.</p> <p>*Note*: For all Installation questions or concerns, please always direct them to your Customer Success Manager and not to the technician.</p>
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Please Note: On some occasions, third parties outside of Flock Safety may be (or need to be) involved in your implementation.

OUTSIDE PARTY	WHEN THEY MAY BE INVOLVED
Electrician/Street Department	If your Flock cameras need to be AC powered, you (customer) are responsible for providing an electrician to ensure power connectivity
Public Works (LE)	To weigh in on use of public Right of Ways or property
Department of Transportation (DOT), City, or County Agencies	If installation in your area requires permitting

THINGS TO CONSIDER WHEN PICKING LOCATIONS

Falcon Cameras

- Use Cases

- Flock LPRs are designed to capture images of rear license plates, aimed in the direction of traffic.
- Flock LPRs are not designed to capture pedestrians, sidewalks, dumpsters, gates, other areas of non-vehicle traffic, intersections

- Placement

- They capture vehicles driving away from an intersection.
- They cannot point into the middle of an intersection.
- They should be placed after the intersection, to prevent stop and go motion activation, or "stop and go" traffic.

- Mounting

- They can be mounted on existing utility, light, or traffic signal poles, or 12 foot Flock poles. ****NOTE**** Permitting (or permission from pole owner) may be required in order to use existing infrastructure or install in specific areas, depending on local regulations & policies.
- They should be mounted one per pole*. If using AC power, they can be mounted 2 p pole.

*Cameras need sufficient power. Since a solar panel is required per camera, it can prevent sufficient solar power if 2 cameras and 2 solar panels were on a single pole (by blocking visibility). Therefore if relying on solar power, only one camera can be installed per pole.

- They can be powered with solar panels or direct wire-in AC Power (no outlets). ****NOTE**** Flock does not provide Electrical services. The agency or community must work with an electrician to wire the cameras once installed. Electrician services should be completed within 2 days of installation to prevent the camera from dying.
- They will require adequate cellular service using AT&T or T-Mobile to be able to proce & send images
- Any Flock equipment mounted over 14 feet or on a horizontal beam will require a bucket truck. If mounting in this way:
 - Flock will request use of a bucket truck through the customer or Public Works
 - If a bucket truck is not available through the customer, Flock will have to procu one.

****Note**** This will lead to delays on install & any subsequent maintenance visits based on bucket truck availability

- Flock will likely require traffic control assistance provided by customer to install or provide maintenance with a bucket truck

THINGS TO CONSIDER WHEN

Solar Panels

- Solar panels need unobstructed southern-facing views

CUSTOMER RESPONSIBILITIES:

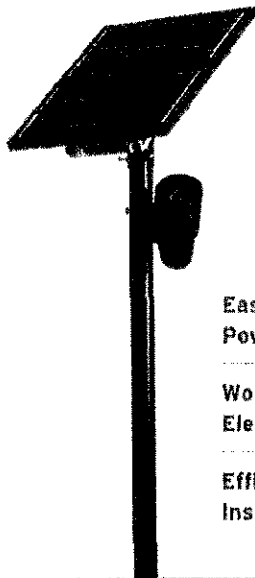
AC-POWERED CAMS

In the event your Flock cameras need to be AC-powered, the customer is responsible for acquiring an electrician and ensuring they connect the camera to power. See steps 2 and 6 below.



Don't Let Access to Solar Limit Your Power Needs

The Flock Safety license plate reading camera system can leverage AC power to help your community solve crime no matter the location.



Easy to Use Install Power Kit

Work with Local Electricians

Efficient Quote & Installation Process

How to Get Started with a Powered Install

- 1. Create a Deployment Plan**
Work with Flock to select the best location(s) for your cameras and power sources.
- 2. Acquire an Electrical Quote**
Contact an electrician to receive a quote to run 120volt AC power to the camera.
- 3. Sign Flock Safety Agreement**
Sign the Flock Safety purchase order to begin the installation of the cameras.
- 4. Conduct Site Survey**
Flock will mark camera locations, locate underground utilities and mark if present.
- 5. Install Camera**
Flock will install the camera and AC power kit at the specified camera location.
- 6. Connect Camera to Power**
Notify the electrician that the camera is ready for the power connection installation.

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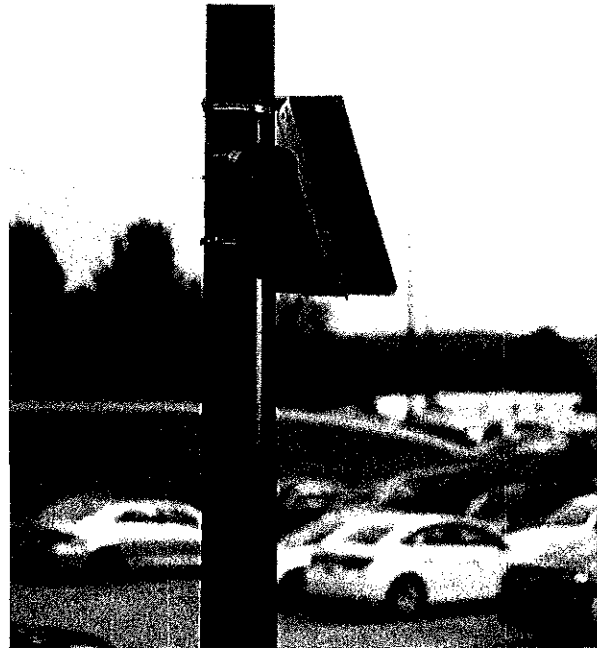
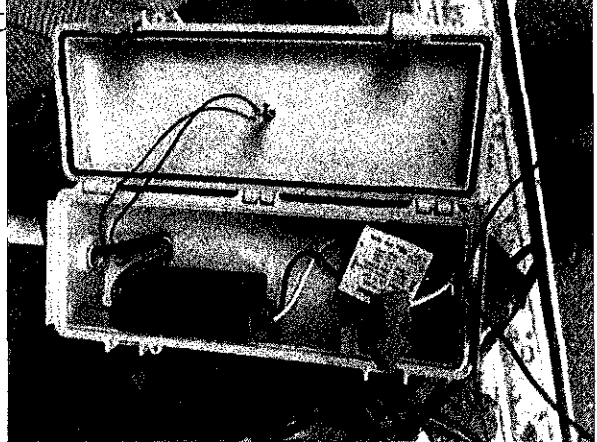
Visit flocksafety.com/power-install for the full plan, FAQs & to get started!

ELECTRICIAN HANDOUT

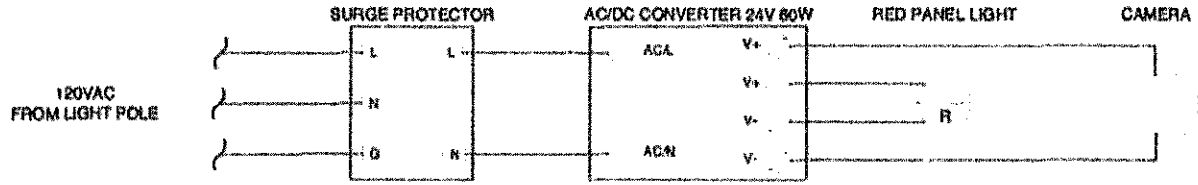
Electrician Installation St

1. Run AC cable and conduit to the box according to NEC Article 300 and any applicable local codes. The gland accepts 1/2" conduit
2. Open the box using hinges
3. Connect AC Mains per wiring diagram below:
 - a. Connect AC Neutral wire to the Surge Protector white Neutral wire using the open position on the lever nut.
 - b. Connect AC Line wire to the Surge Protector black Line wire using the open position on the lever nut.
 - c. Connect AC Ground wire to the Surge Protector green ground wire using the open position on the lever nut.
4. Verify that both the RED LED is lit on the front of the box
5. Close box and zip tie the box shut with the provided zip tie
6. While still on site, call Flock who will remotely verify that power is working correctly:

Southeast Region - (678) 562-8766
 West-Region - (804) 607-9213
 Central & NE Region - (470) 868-4027



ELECTRICIAN HANDOUT



120VAC
FROM LIGHT POLE

SURGE PROTECTOR

AC/DC CONVERTER 24V 80W

RED PANEL LIGHT

CAMERA

L

L

ACL

V+

N

V+

R

G

N

ACN

V-

V-

FAQS ABOUT AC-POWERED FLOCK CAMERAS

What voltage is supported?

The AC kit is designed to work with 120VAC infrastructure by default. A 240VAC version is available on request.

How much power does this consume?

Peak current draw is 1.5 A at 120VAC. Average power draw is roughly 30W in high traffic conditions, but may be lower when less vehicles are present.

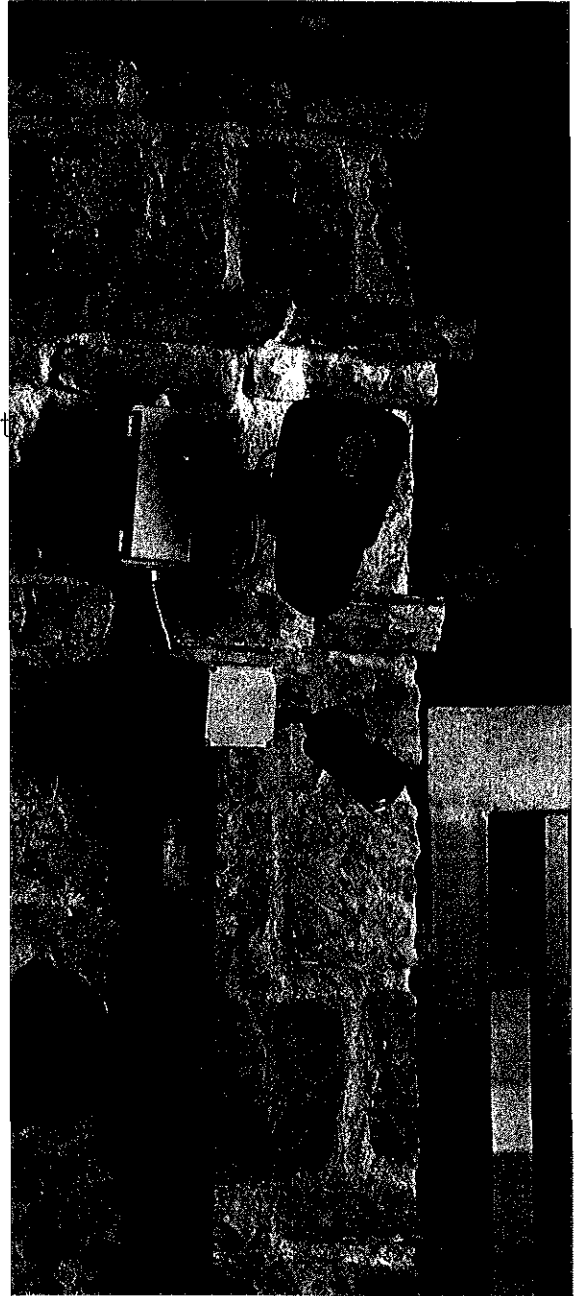
Who is responsible for contracting the electrician?

The customer is responsible for contracting an electrician. We can help answer questions, but the customer is responsible for identifying and contracting an electrician.

Who is responsible for maintenance?

Flock will handle all maintenance related to the camera and power equipment installed by Flock. However, any problems with the electrical supply are the responsibility of the customer. The AC junction box has two lights to indicate the presence of power and make it easy for quick diagnosis if there is a problem related to the AC power source.

In the event the camera indicates to Flock that there is a power supply problem, Flock will notify the customer and request that the customer verify the lights on the AC junction box. If the AC Source light is illuminated, Flock will send a technician to investigate. If the AC source light is not illuminated the customer should check any GFCI's or breakers in the supply circuit or call the electrician who installed the power supply.



How much does it cost?

Work required to bring AC power to each location will be different, so exact pricing is not possible. The primary driver of cost is the distance from AC power source to the intended camera location.

What information do I need to provide my electrician?

The Flock deployment plan and these work instructions should be sufficient to secure a quote. It will be helpful if you know the location of existing power infrastructure before creating the deployment plan.

Can you plug into my existing power outlet?

The Flock AC power adapter does not use a standard outlet plug, but must be directly wired into the power mains. While using outlet plugs may be convenient, they can easily be unplugged presenting a tampering risk to this critical safety infrastructure. If an outlet is close to the camera, the electrician can route power directly to the camera with a direct wire-in connection.

How long does this process typically take?

The installation process typically takes 6-8 weeks. In order to accelerate the process, be sure to have the electrician perform his work shortly after the Flock technician finishes installing the camera.

What kind of electrician should I look for?

Any licensed electrician should be able to perform this work, though we have found that those who advertise working with landscape lighting are most suited for this work.

What happens if the electrician damages the equipment?

The customer is responsible for contracting the electrician. Any liability associated with this work would be assumed by the customer. If any future work is required at this site due to the electrical infrastructure or the work performed by the electrician would be the responsibility of the customer.

When should the electrician perform his work?

Once Flock installs the camera, you will receive an email alert letting you know that this has been completed. After this, you will need to schedule the electrician to route power to the pole.

What if my electrician has questions about Flock's AC Kit?

You should share the **AC-Power Kit Details** packet with the electrician if they have questions.

What if the AC power is on a timer?

Sometimes the AC power will be on a timer (like used for exterior lighting). Flock requires that the AC power provided to the camera be constant. The source that the electrician uses must not be on a timing circuit.

INSTALLATION SERVICE BRIEF

Below outlines the statement of work for your Flock Camera Installation:

WHAT IS COVERED BY FLOCK	WHAT IS <i>NOT</i> COVERED BY FLOCK	SPECIAL NOTE
Flock Cameras & Online Platform	Traffic Control and any associated costs	
Mounting Poles	Electrician & ongoing electrical cost	
AC Power Kit <i>(as needed)</i>	Engineering Drawings	
Solar Panels <i>(as needed)</i>	Relocation Fees	<i>exc. changes during initial installation</i>
Site Surveys and Call 811 Scheduling	Contractor licensing fees	
Installation Labor Costs	Permit application processing fees	
Customer Support / Training	Specialist mounting equipment	<i>Including, but not limited to, *MASH poles or adapters</i>
Cellular Data Coverage	Bucket trucks	
Maintenance Fees <i>(review Fees Sheet for more details)</i>	Loss, theft, damage to Flock equipment	
Data storage for 30 days	Camera downtime due to power outage	<i>Only applicable for AC-powered cameras</i>

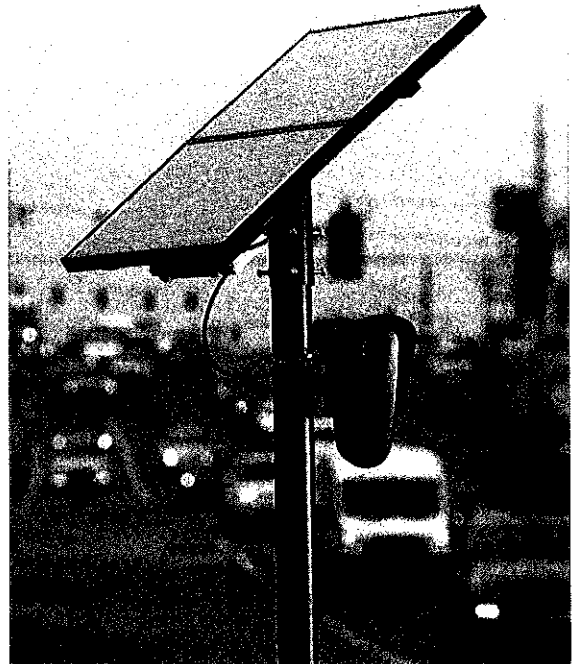
*MASH poles: Manual for Assessing Safety Hardware (MASH) presents uniform guidelines for crash testing permanent and temporary highway safety features and recommends evaluation criteria to assess test results

PERMITTING:

PRE-INSTALL QUESTIONNAIRE

1. Timeline

- In Flock Safety's experience, in-depth permitting requirements can **add 2+ months to the installation timeline**. Law enforcement agencies and city governments can work with their local Public Works or Department of Transportation offices directly to help expedite the process. When Flock Safety customers manage the permitting processes, results tend to come more quickly.
- Is your agency able to own the permitting process with Flock Safety's assistance?



2. Right of Way

- Will any of the Flock Safety cameras be installed on city, state or power company owned poles or in city, county, or state Right of Way (RoW)?
 - What is the RoW buffer?
 - Will additional permits or written permission be required from third-party entities (such as DOT, power company, public works, etc)?
- Will any cameras be installed on city-owned traffic signal poles (vertical mass)?
 - If yes, please provide heights/photos to determine if a bucket truck is needed for the installation.
Note: If height is greater than 15 feet tall, a bucket truck is **required**.



3. AC Power vs. Solar

- If AC powered, is there a 120V power source available, and is there access to an electrician who can connect the existing wire to the Flock Safety powered installation kit?
- If solar powered, consider the size of the solar panel and potential to impact

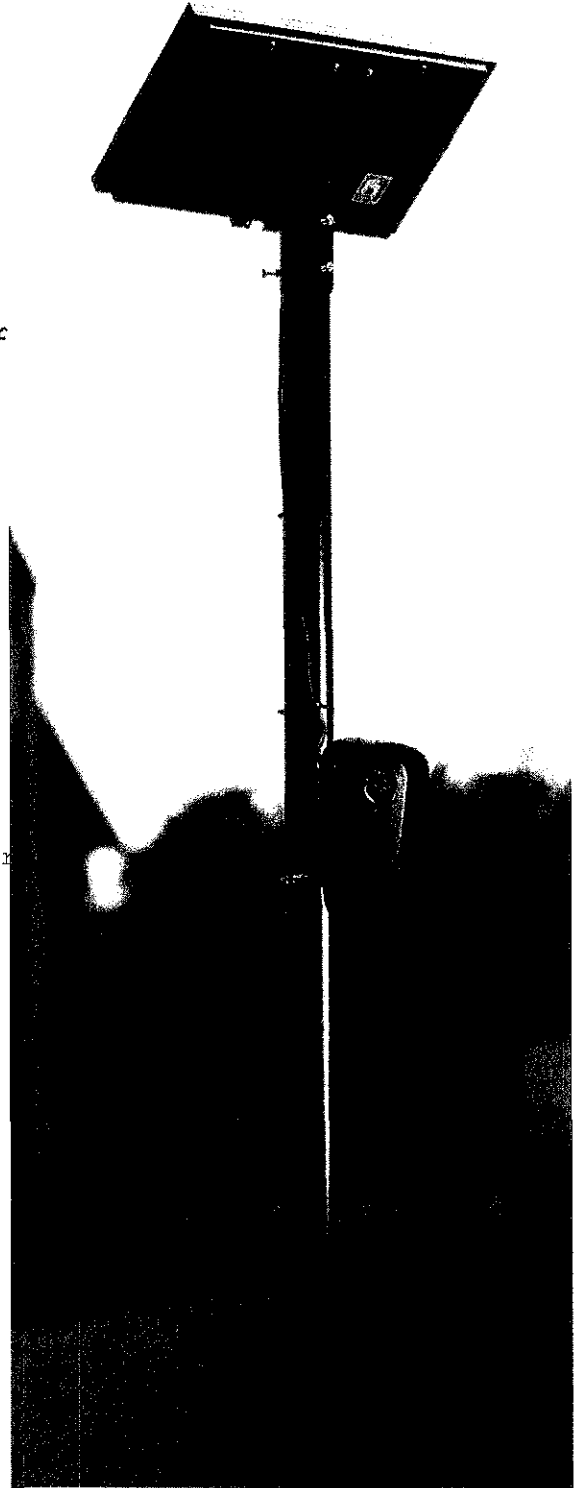
flock safety

visibility of DOT signs/signals:

- Single Panel: 21.25" x 14" x 2" (Length x Width x Depth)
- Double Panel: 21.25" x 28" x 2" (LxWxD)

4. Traffic Control & Installation Methods

- If a bucket truck is required, this typically necessitates a full lane to be blocked in the direction of travel. Can you provide a patrol car escort, or will full traffic control be required?
 - Note: If traffic control is required, you may incur additional costs due to city/state requirements; Fees will be determined by quotes received.
- If full traffic control required (cones, arrowboard)
 - Will standard plans suffice, or are custom plans needed? Custom plans can double the cost, while standard plans can be pulled from the Manual of Uniform Traffic Control Devices (MUTCD).
 - Will a non-sealed copy of the traffic plan suffice? Or does the traffic plan need to be sealed and/or submitted by a professional engineer?
 - Are there state-specific special versions/variances that must be followed?
- If a bucket truck is *not* required, the shoulder or sidewalk should suffice and enable Flock Safety to proceed without traffic control systems in place.
 - Note: In some states (i.e. California), sidewalks may require signage. If signage is mandatory, Will your Public Works department be able to assist?



5. Paperwork & Required Forms

- Flock Safety will need copies of paperwork to complete prior to proceeding (ex. business license applications, encroachment permit applications). We can save critical time by gathering these documents upfront. We appreciate your assistance in procuring these.

6. Contacts

- If Flock Safety will need to interface directly with the departments, please share

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the contact information of the following departments:

- Permutting
- Public Works
- Traffic Department

FEE SCHEDULING

*Fee Schedule

After a deployment plan with Designated Locations and equipment has been agreed upon by both Flock and the Customer, any subsequent changes to the deployment plan ("Reinstalls") driven by a Customer's request will incur a fee per the table below.

All fees are per reinstall or required visit (in the case that a reinstall is attempted but not completed) and include labor and materials. If you have any questions, please email support@flocksafety.com.

*Below fee schedule is subject to change;

REINSTALL OR JOB TYPE	REINSTALL FEE
Camera or pole relocation	\$150
Camera replacement as result of vandalism, theft, or third party damage	\$500
Pole replacement as a result of vandalism, theft, or third party damage	\$150
Pole upgrade	\$300
' Angle Adjustment - Customer request	\$125
Installation of additional Flock Safety sign (including cost of sign)	\$100
Convert camera to use of electrical outlet (excluding cost of electrical work)	\$150
Other site visit/technician visit that does not result in a reinstall being required	\$150

HELP CENTER

Our Help Center is filled with tons of resources to help you navigate through the online platform. Below you will find some common questions and their relevant help article:

How do I search camera footage? How do I add a user?

How do I add a vehicle to my own Hot List?

How do I enable browser notifications for Hot List alerts? How do I get text alerts for Hot List?

How do I request camera access from other nearby agencies?

How do I use the National Lookup to search for a plate?

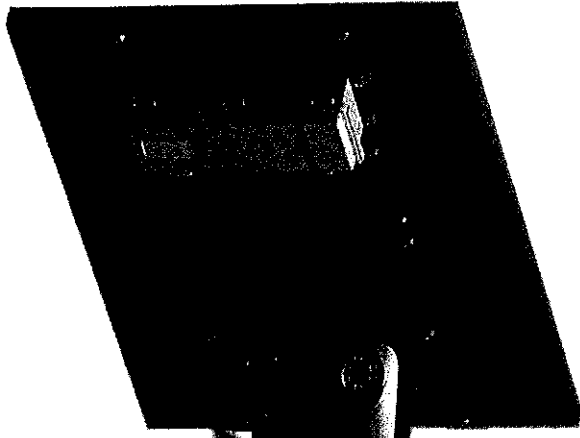
(National Lookup - network of law enforcement agencies that have opted to allow their Flock cameras to be used for searches)

How do I reset my / another user's password?

CUSTOMER SUPPORT

You can reach our customer support team anytime by emailing support@flocksafety.com.

They can help answer any "How-To" questions you may have.





CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021 **FILE I.D.:** CVC701
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 5 **PREPARER:** S.STANTON
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-81 WITH WILLDAN ENGINEERING, INC., FOR ELECTRICAL ENGINEERING AND DESIGN SERVICES FOR THE ELECTRIC VEHICLE CHARGING STATION PROJECT

CONSIDER AUTHORIZING THE CITY MANAGER TO AMEND THE SCOPE OF SERVICES AS NECESSARY FOR A CONTINGENCY AMOUNT NOT TO EXCEED \$5,000

REASON FOR CONSIDERATION: Engineering design services are required for the development of construction plans and specifications for the construction of electrical vehicle charging stations at City facilities. Agreements for design services associated with construction plans require City Council approval.

BACKGROUND: On December 2, 2019, the City Council adopted the 2019-2024 Capital Improvement Program, which included the Installation of EV Charging Stations Project. The project is entirely funded by grant funds under AB2766, AQMD Clean Transportation Funding. The City was awarded \$80,000 for the design and installation of EV charging stations at City facilities including City Hall, the City Yard, and the Police Department.

The project intends to install one charging station at City Hall, one charging station at the City Yard, and one charging station at the Police Department. The design will include infrastructure that allows for future expansion of the EV charging stations.

For the initial phase of design, staff prepared a request for Statement of Qualifications (SOQ) and sent the request to three electrical engineering firms:

- Yao Engineering, Pasadena, CA
- Willdan Engineering, Industry, CA
- A-F Engineering, Rancho Cucamonga, CA

Of the three firms, two responded with interest in the project. After reviewing the responses to the City's request, the City's evaluation team determined that the proposal submitted by Willdan Engineering exhibited the most knowledge, experience, and projects of a similar nature.

Willdan Engineering submitted a total cost proposal of \$19,000. The fees include \$16,500 to prepare Plans, Specifications, and Estimates; and \$2,500 for engineering support during construction.

FISCAL IMPACT: Funding for this project is entirely provided through the AQMD Clean Transportation Funding grant under AB2766.

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

1. Approve Agreement No. 21-81 with Willdan Engineering, Inc., for electrical engineering and design services for the Electric Vehicle Charging Station Project.
2. Authorize the City Manager to amend the Scope of Services as necessary for a contingency amount not to exceed \$5,000.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

DESIGN SERVICES FOR ELECTRIC VEHICLE CHARGING STATION PROJECT

THIS AGREEMENT is made and effective as of December 20, 2021, between the City of Montclair, a municipal corporation ("City") and Willdan Engineering, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on December 21, 2021 and shall remain and continue in effect for a period of 6 months until tasks described herein are completed, but in no event later than June 30, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. CITY MANAGEMENT

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. PAYMENT

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **This amount shall not exceed**

\$19,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Contractor shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and

representatives, as broadly interpreted (collectively, the “Indemnified Parties”), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Contractor herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents, and other persons or entities performing work for Contractor.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Contractor shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Contractor or by any individual or entity for which Contractor is legally liable, including but not limited to Contractor’s officers, agents, representative, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, caused by or arising out of all negligent acts or omissions, or intentional misconduct of Contractor, including its subcontractors, employees, agents and other persons or entities performing work for Contractor. Indemnification shall include any claim that Contractor, or Contractor’s employees or agents, are or may be considered and treated as employees of the City, or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Contractor’s obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors and Indemnification. Contractor agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Contractor in the performance of any aspect of this Agreement. In the event Contractor fails to obtain such indemnity obligations, Contractor shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Contractor and shall survive the full performance or termination of

this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Contractor further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Contractor or of Contractor’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Contractor further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City’s Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Contractor under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Contractor begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Contractor. The indemnity obligations of Contractor shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City’s rights to contribution from Contractor, or for the City to dispute Contractor’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Contractor shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Contractor under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Contractor expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Contractor’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Contractor pursuant to this Agreement.

(h) The Contractor’s covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of contractor
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Contractor.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Contractor from waiving the right of subrogation prior to a loss. Contractor shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Contractor or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this Agreement. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Contractor until Contractor has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this

Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Contractor's expense, the premium thereon.

In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Contractor's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Contractor shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subconsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Monica Heredia, PE
City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Willdan Engineering
13191 Crossroads Parkway North, Suite 405
Industry, CA 91746

17. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Contractor from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Contractor in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Contractor shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into 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.

21. CONTENTS OF REQUEST FOR PROPOSALS

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the

requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Contractor must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Contractor. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Contractor warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

IN WITNESS THEREOF, the parties hereto execute this Agreement as of the day and year first set forth above.

CITY OF MONTCLAIR, CALIFORNIA

WILLDAN ENGINEERING

By: _____
Javier John Dutrey, Mayor

By: _____
Title: _____

Attest: _____
Andrea Myrick, City Clerk

Date: _____

Date

By: _____
Title: _____

Approved as to form:

Date: _____

Diane E. Robbins, City Attorney

EXHIBIT A



October 20, 2021

Ms. Monica Heredia, PE
 Director of Public Works/City Engineer
 City of Montclair
 5111 Benito Street
 Montclair, CA 91763

Subject: Proposal to Provide Professional Traffic Engineering Design Services for the Installation of EV Charging Stations at 3 Locations

Dear Ms. Heredia:

Willdan Engineering (Willdan) is pleased to submit this proposal to provide professional traffic engineering design services to the City of Montclair for the preparation of plans, specifications, and estimates (PS&E) for the installation of a new EV charging stations at three (3) City facilities. The following table lists the proposed improvements for each location.

Location	Improvements
Civic Center Parking Lot 5111 Benito Street	1 Level 2 EV Charging Station Dual Port
City Yard Parking Lot 10835 Monte Vista Avenue	1 Level 2 EV Charging Station Dual Port
Police Station Parking Lot 4870 E Arrow Highway	1 Level 2 EV Charging Station Dual Port

The following is our proposed scope of work, schedule and fee:

SCOPE OF WORK

Task 1 - Plans, Specifications, and Estimates (PS&E)

- Attend a kick-off meeting with City personnel to review specific design and project requirements. Major aspects of the project will be discussed, including design criteria, facilities coordination, plan preparation and specifications, estimates, submittal reviews, bid process, and anticipated construction issues. Obtain record drawings of striping plans, utility plans, parking lot plans, electrical plans, etc.
- Conduct a field investigation to verify existing topographic conditions and identify any unusual or special conditions. If desired by the City, a topographic land survey can be provided for an additional cost.
- Provide utility coordination, including notices to all utility companies in accordance with City's procedures. All documentation of contacts and responses will be copied to the City. Willdan Engineering will prepare utility notices and deliver them to the City for mailing

562.908.6200 | 800.499.4484 | fax: 562.695.2120 | 13191 Crossroads Parkway North, Suite 405, Industry, California 91746-3443 | www.willdan.com

City of Montclair
 EV Charging Station Design
 October 20, 2021
 Page 2

under City letterhead. If so desired by the City, Willdan Engineering can transmit these notices under Willdan Engineering's letterhead; however, the City shall be responsible for any fees assessed to Willdan Engineering by the utility companies. In either case, all responses, questions, and correspondence from the utility companies will be addressed to Willdan Engineering's Utility Coordinator.

4. If new electrical meters are required, Willdan will coordinate new service feed points with Southern California Edison (SCE) to power the new EV charging stations and prepare all requested SCE documentation.
5. Prepare a title sheet using the City's title block including location map and general notes.
6. Prepare EV charging station plans for the three (3) project locations at a scale of 1"=20' using AutoCAD 2021, stamped and signed by a Registered Engineer. The new EV charging stations will be designed as independent circuits within existing facilities. If there is insufficient space and capacity within existing facilities, the charging stations will be designed as an independent system with new service panels, wiring and conduits separate from existing facilities. The final construction plans shall identify all work to be done, with clear call-outs, construction notes and general notes referencing materials, sizes, depths, distances, dimensions, quantities and manufacturer model numbers for the construction of a fully functional EV charging station system consistent with best principles and practices. Plans will include minor signing and striping modifications, as needed. The EV charging station construction plans shall include but not be limited to the following:
 - a. EV charging station electrical design plans (2 sheets)
 - b. EV charging station circuit diagrams and load calculations (1 sheet)
 - c. EV charging station detail sheet (1 sheet)
7. Prepare construction cost estimates, bid document and special provisions for construction of the EV charging station improvements. Submit 90% and 100% PS&E to the City for review and comment.
8. Upon receipt of final comments, make final revisions and submit final PS&E with the plans plotted on mylar for City advertisement and bidding.

Task 2 – Engineering Support During Construction

1. Provide assistance to answer questions relating to the approved design during the bidding and construction phases.
2. Be available to attend a pre-construction meeting following award of the contract. It is anticipated that the meeting will be held at the City.
3. Review project material submittals and RFI's during construction. Provide responses to RFI's as necessary.
4. Provide record drawings upon the completion of EV charging station improvements.

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City of Montclair
EV Charging Station Design
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SCHEDULE

We estimate that preliminary PS&E can be completed for review within 12 weeks from a Notice-to-Proceed. Revised PS&E can be completed within 3 weeks of receipt of City comments.

FEE

We propose to provide the above engineering services for a not-to-exceed fee of \$19,000 based on the following breakdown.

Task 1 – Plans, Specifications, and Estimates (PS&E)	\$ 16,500
<u>Task 2 – Engineering Support During Construction</u>	<u>\$ 2,500</u>
Total	\$ 19,000

Please indicate the City's approval and authorization to proceed by either printing out and signing two originals and returning one hard copy original to our office, or by scanning one signed original and returning it by e-mail.

Thank you for the opportunity to be of continuing service to the City of Montclair. We recognize the importance of this project to the City and are committed to realizing its timely and successful completion. Should you have any questions regarding this proposal, please contact me at (562) 364-8526 or via e-mail jlau@willdan.com or Mr. Tyrone Peter at (657) 223-8557 or tpeter@willdan.com.

Respectfully submitted,

WILLDAN ENGINEERING



Jeffrey Lau, PE, TE, ENV SP
Deputy Director of Engineering

Approval and Authorization to Proceed By:

CITY OF MONTCLAIR

Signature

Date

910005/WW.00.60/P20-354_22595

Comprehensive. Innovative. Trusted.





CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	MCF150/MCF175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	MCF/HUMAN SVCS.
ITEM NO.:	6	PREPARER:	A. COLUNGA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-82 WITH KAISER FOUNDATION HOSPITALS TO AWARD A GRANT IN THE AMOUNT OF \$10,000 TO SUPPORT THE MONTCLAIR TO COLLEGE PROGRAM		
	CONSIDER AUTHORIZING EXECUTIVE DIRECTOR EDWARD C. STARR TO SIGN AGREEMENT NO. 21-82		

REASON FOR CONSIDERATION: The Montclair Community Foundation Board is requested to consider approving Agreement No. 21-82 with Kaiser Foundation Hospitals for a grant in the amount of \$10,000 to support Montclair to College. In addition, the MCF Board is requested to consider authorizing the Executive Director of MCF, Edward C. Starr, to sign Agreement No. 21-82.

BACKGROUND: In July 2021, the Montclair Community Foundation was invited by Kaiser Permanente Ontario Medical Center Community Health Contributions Program to apply for grant funding under one of their strategic priorities.

The vision of MCF is to work collaboratively to strengthen services and enhance the quality of life for residents by promoting health, wellness, and economic stability for all, including the most vulnerable in our community. The mission of MCF is to guarantee a quality community for all by working together as diverse, committed individuals and organizations to make an impact that improves the overall well-being of the community.

The Montclair to College (MTC) program, previously known as Online to College, was established in 1998. MTC is supported by the Montclair Community Foundation (MCF) to offer Montclair students the opportunity to attend Chaffey College through a scholarship that includes tuition, books, parking, and other necessary fees. The program began at three Montclair Elementary schools and later expanded to include all elementary schools. MTC continued to evolve and in 2015 the program transitioned to begin at the ninth grade level for students attending Montclair High School (MHS) to allow for more consistency within the program.

MTC operates with the overall goal of increasing economic prosperity in Montclair through increasing college enrollment rates among students at MHS. In addition to offering MHS students college funding and educational support, MTC also provides students with the opportunity to participate in college workshops, campus tours, and community activities.

FISCAL IMPACT: Kaiser Foundation Hospitals has approved granting an award to the Montclair Community Foundation in the amount of \$10,000 for the MTC program. There will be no other direct fiscal impact on the Montclair Community Foundation as a result of the approval of Agreement No. 21-82. The term of Agreement 21-82 is December 1, 2021 through December 1, 2022.

RECOMMENDATION: Staff recommends the Montclair Community Foundation Board of Directors take the following actions:

1. Approve Agreement No. 21-82 with Kaiser Foundation Hospitals to award a grant in the amount of \$10,000 to support the Montclair to College Program.
2. Authorize Executive Director Edward C. Starr to sign Agreement No. 21-82.

LETTER OF AGREEMENT
KAISER FOUNDATION HOSPITALS, ONTARIO
COMMUNITY BENEFIT CHARITABLE CONTRIBUTIONS PROGRAM

This Letter of Agreement (hereinafter “Agreement”) is entered into by and between **Kaiser Foundation Hospitals**, a California nonprofit, public benefit corporation (hereinafter “KFH”) and **Montclair Community Foundation**, a California nonprofit, public benefit corporation, that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or a charter city organized in the State of California and not subject to federal or state income tax or a legally recognized school district organized in the State of California and not subject to federal or state income tax or a political subdivision of the State of California and not subject to federal or state income tax.

This Agreement sets forth the understanding of the parties hereto as to the terms and conditions under which KFH shall donate funds in the amount of **\$10,000.00 for a 12 month funding period beginning 12/1/2021 through 12/1/2022 for Montclair to College: Increasing Economic Prosperity in Montclair**. Such terms and conditions are as follows:

1. **Tax Exemption Status**: Grantee represents that at all times relevant herein, it is a California nonprofit, public benefit corporation, that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or a charter city organized in the State of California and not subject to federal or state income tax or a legally recognized school district organized in the State of California and not subject to federal or state income tax or a political subdivision of the State of California and not subject to federal or state income tax.
2. **Purpose of Grant**. Grantee shall use entire Grant to support the goals, objectives, activities, and outcomes as stated in the Grant Summary.
3. **Expenditure of Funds**. This Grant (together with any income earned upon investment of grant funds) may not be expended for any other purpose without KFH’s prior written approval.
4. **Prohibited Uses**. In no event shall Grantee use any of the funds from this Grant to (a) support a political campaign, (b) support or attempt to influence any government legislation, except making available the results of non-partisan analysis, study or research, or (c) grant an award to another party or for any purpose other than one specified in Section 170(c)(2)(b) of the Internal Revenue Code of 1986 as amended.
5. **Return of Funds**. KFH reserves the right to discontinue, modify or withhold payments to be made under this Agreement or to require a total or partial return of any funds, including any unexpended funds under the following conditions:
 - (a) If KFH, in its sole discretion, determines that the Grantee has not performed in accordance with this Agreement or has failed to comply with any term or condition of this Agreement.
 - (b) If Grantee loses its status as an eligible Grantee under Paragraph 1 above.
 - (c) Any portion of the funds is not used for the approved purpose
 - (d) Such action is necessary to comply with the requirements of any law or regulation applicable to Grantee or to KFH or to this Grant.

6. Records, Audits and Site Visits. KFH is authorized to conduct audits, including on-site audits, at any time during the term of this Grant and within four years after completion of the Grant. Grantee shall allow KFH and its representatives, at its request, to have reasonable access during regular business hours to Grantee's files, records, accounts, personnel and client or other beneficiaries for the purpose of making such audits, verifications or program evaluations as KFH deems necessary or appropriate concerning this Grant. Grantee shall maintain accounting records sufficient to identify the Grant and to whom and for what purpose such funds are expended for at least four (4) years after the Grant has been expended.

7. No Assignment or Delegation. Grantee may not assign, or otherwise transfer, any rights or delegates any of Grantee's obligations under this Agreement without prior written approval from KFH.

8. Records and Reports. Grantee shall submit written progress report(s) to KFH in accordance with the due dates stated on the Grant Summary (Attachment).

Grantee shall be primarily responsible for the content of the evaluation report. If KFH determines IRB approval is necessary, as part of the evaluation process, Grantee shall follow KFH IRB approval processes and procedures.

9. Required Notification. Grantee is required to provide KFH with immediate written notification of any change in Grantee's tax exempt status or when Grantee is unable to expend the grant funds for the approved purposes described in the Work Plan.

10. Identification of KFH. Grantee shall identify KFH as a supporting organization in all published material relating to the subject matter of this Grant. Whenever possible and appropriate, Grantee shall publicly acknowledge KFH for this Grant.

11. Equal Employment Opportunity. Grantee agrees to comply with and be bound by the nondiscrimination and affirmative action clauses contained in: Executive Order 11246, as amended, relative to equal opportunity for all persons without regard to race, color, religion, sex or national origin; the Vocational Rehabilitation Act of 1973, as amended, relative to the employment of qualified handicapped individuals without discrimination based upon their physical or mental handicaps; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, relative to the employment of disabled veterans and veterans of the Vietnam Era, and the implementing rules and regulations prescribed by the Secretary of Labor in Title 41, Part 60 of the Code of Federal Regulations (CFR).

12. Immigration Act Requirements. Grantee shall comply during the term of this Agreement with the provisions of the Immigration Reform and Control Act of 1986 and any regulations promulgated thereunder. Grantee hereby certifies that it has obtained a properly completed Employment Eligibility Certificate (INS Form I-9) for each worker performing services related to the program described in the Work Plan.

13. Licensing and Credentials. Grantee agrees to maintain, in full force and effect, all required governmental or professional licenses and credentials for itself, its facilities and for its employees and all other persons engaged in work in conjunction with this Grant.

14. Payment of Grant. First payment by KFH will be contingent upon a signed Agreement between KFH and Grantee. Subsequent payments (if any) are contingent upon compliance with this Agreement, including timely receipt of reports as outlined in Paragraph 8 above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Kaiser Foundation Hospitals

DocuSigned by:

By: *Georgina Garcia*
43CD9GCD44B14BE...
Georgina Garcia

Senior Vice President, Area Manager

11/5/2021
Date

Grantee

Date

Executive Director
Montclair Community Foundation

LETTER OF AGREEMENT
Attachment

GRANT SUMMARY

DATE AUTHORIZED: 10/28/2021	
GRANTEE NAME: Montclair Community Foundation	AMOUNT: \$10,000.00 over 12 months
FISCAL AGENT: N/A	
CONTACT, TITLE: Alyssa Colunga, Senior Management Analyst	
TELEPHONE: 909-625-9459	
CB PROJECT MANAGER: Martha Valencia Phone: 909-427-5268 Email: Martha.R.Valencia@kp.org	
GRANT PURPOSE: Montclair to College: Increasing Economic Prosperity in Montclair	
GRANT PERIOD:	
Start date: 12/1/2021	End Date: 12/1/2022

NARRATIVE AND FINANCIAL REPORTS DUE:

Requirement	Due Date
Progress Report	N/A
Final Report	1/1/2023



CITY COUNCIL AGENDA REPORT

DATE: DECEMBER 20, 2021

FILE I.D.: MHP025

SECTION: CONSENT - AGREEMENTS

DEPT.: CITY MGR.

ITEM NO.: 7

PREPARER: E. STARR

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-83 WITH CSG ADVISORS FOR MUNICIPAL ADVISORY SERVICES TO EVALUATE AUGUSTA COMMUNITIES LLC'S PROPOSED 2022 INDENTURE OF TRUST TO REFINANCE ITS SERIES 2012A MOBILE HOME PARK REVENUE REFUNDING BONDS AND SERIES 2012B MOBILE HOME PARK SUBORDINATE REVENUE REFUNDING BONDS ISSUED BY THE INDEPENDENT CITIES FINANCE AUTHORITY

CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN AGREEMENT NO. 21-83 WITH CSG ADVISORS

REASON FOR CONSIDERATION: Augusta Communities LLC, a California Limited Liability Company, by means of a 2022 Indenture of Trust, is proposing to refund its Series 2012A Mobile Home Park Revenue Refunding Bonds and Series 2012B Mobile Home Park Revenue Subordinate Refunding Bonds (the 2012 Bonds) issued by the Independent Cities Finance Authority (ICFA). The proposed 2022 Indenture of Trust would also be issued through ICFA.

The 2022 Indenture of Trust is projected to secure approximately \$7.5 million in new bond income for Augusta for maintenance, operation and capital accounts. Pursuant to requirements of the 2012 Bonds, Augusta requires the City's approval to refund the 2012 Bonds. The City is not required to consent to the refunding proposal.

The former Montclair Redevelopment Agency (RDA) established a [Mobile Home] Park Acquisition Program in 1998. The purpose of the Program was to establish a 501(c)(3) (Augusta is the non-profit entity established through the Program) to acquire, own and manage parks in Montclair with affordability restrictions. To facilitate the acquisition and maintenance of three mobile home parks in Montclair (Villa Montclair, Monterey Manor, and Hacienda—the Projects), the City cooperated in the issuance of a series of Mobile Home Park Revenue Bonds: the 1999A Series, 2000 Series, and 2002 Series (the Prior Bonds). Each of the Prior Bonds and associated covenants and agreements required the maintenance of affordable housing provisions for the perpetuity of the Prior Bonds.

In addition to entering into agreements and covenants with Augusta, the RDA, through Affordable Housing Agreements, provided a series of three Residual Receipt Loans, plus an amended Loan amount for the Hacienda Project (collectively, the "RDA Loans") to Augusta in the total amount of \$2.475 million, plus 2 percent interest, to provide additional financing with respect to the sequential acquisition and rehabilitation of the three mobile home parks in Montclair. Pursuant to Promissory Notes and Affordable Housing Agreements, the RDA Loans are to be paid back to the City by their respective maturity dates as specified in the associated documents for each Project.

In 2012, Augusta sought and received City approval to refund the Prior Bonds through issuance of the 2012 Bonds.

According to the proposed 2022 Indenture of Trust, refinancing the 2012 Bonds would

extend the issuance to 2056 and extend affordability covenants to 2042.

Due to the Montclair City Council's fiduciary responsibilities to the community, and to ensure maintenance of affordability covenants and secure payment of the respective RDA Loans, it is imperative that due diligence be conducted on the proposed refunding of the 2012 Bonds.

To facilitate the due diligence process, City staff recommends entering into Agreement No. 21-83 with CSG Advisors to serve as an Independent Municipal Advisor to evaluate various historical and contemporary documents related to the various agreements and Indentures of Trust related to Augusta and the Projects, including Augusta's proposal to refund the 2012 Bonds.

BACKGROUND: Augusta Communities LLC is a California non-profit 501(c)(3) manufactured housing association founded in 1998 in partnership with the City to provide affordable housing opportunities in Montclair through the acquisition, rehabilitation, and preservation of existing manufactured housing (mobile home) communities. For the most part, residents in Augusta communities own their own mobile home and pay rent to Augusta for their respective spaces. Affordability is maintained through restrictions on the rent for individual spaces.

Augusta currently owns six mobile home communities, including three in Montclair. The six communities host an estimated 927 spaces for mobile homes, of which 440 spaces are in Montclair mobile home park communities.

Mobile home park communities served by Augusta include the following:

Montclair Mobile Home Parks

1. Hacienda, 4361 Mission Boulevard, Montclair. Hacienda is a 204-space community that offers affordable housing opportunities. Hacienda has two swimming pools, playground, basketball court, clubhouse, and RV storage space. A Homeowners' Association oversees quality of life issues at the community.
2. Monterey Manor, 11250 Ramona Avenue, Montclair. Monterey Manor is a 140-space community on 19 acres that offers affordable housing opportunities. Amenities include a clubhouse, assembly hall, television room, fitness center, playground, swimming pool and RV storage space. A Homeowners' Association oversees quality of life issues at the community.
3. Villa Montclair, 5580 Moreno Street, Montclair. Villa Montclair is a 96-space community on 9 acres that offers affordable housing opportunities. Amenities include a clubhouse, assembly hall with exercise equipment, basketball court, playground/tot lot, swimming pool, laundry facilities, and RV storage space. A Homeowners' Association oversees quality of life issues at the community.

Other Augusta-owned and operated locations

1. Rancho Robles, 26814 S. Mooney Boulevard, Visalia, CA 93277 – 170 spaces
2. Valley View, 12995 6th Street, Yucaipa, CA 92399 – 77 spaces
3. Villa del Arroyo, 15750 Arroyo Drive, Moorpark, CA 93021 – 240 spaces

Mobile Home Park Acquisition Program. In 1998, the City of Montclair and the RDA established the Park Acquisition Program to facilitate the purchase of mobile home parks

in the City by a 501(c)(3) nonprofit public benefit corporation (Augusta) for the purpose of preserving affordable housing in mobile home parks by limiting rent increases. The nonprofit was also required to provide residents of the mobile home parks with a voice in park management and living conditions. The Program lessened the burden on the City to provide low- and moderate-income housing under California's Planning and Zoning Law, and assisted the RDA in providing low- and moderate-income housing.

Mobile home parks under the Park Acquisition Program would be owned, managed, and operated by the 501(c)(3) as residential rental projects. Accordingly, Augusta was assigned responsibility for all management functions with respect to the parks, and assumed ownership (through acquisition by the issuance of bonds and loans from the City) with all risks and responsibilities implied thereto, including any payments to bondholders and to the City. The City's ongoing responsibilities include reviewing compliance with the Affordable Housing/Regulatory Agreements between the City and Augusta; monitoring annual budgets and expenses, including semi-annual financial reports and accounts held in trust; and assisting with implementation of the Program.

RDA Loans to Augusta. The Park Acquisition Program set forth specific and ongoing affordable housing requirements and rent limits through a series of memorandum of agreements, affordable housing agreements, and bond covenants. In addition to entering into these various agreements and covenants with Augusta, the RDA agreed to loan provisions of \$2.475 million, plus 2 percent interest, to provide additional financing with respect to the sequential acquisition and rehabilitation of the three mobile home parks in Montclair (Hacienda, Monterey Manor, and Villa Montclair—the Projects)

Each RDA Loan was separately secured by a residual receipts promissory note (i.e., the loans would be paid back to the City with available Gross Revenue exceeding Annual Operating Expenses), a related Memorandum of Agreement, and a Deed of Trust, Security Agreement, and Fixture Filing (with Assignment of Rents) encumbering each of the three mobile home park properties. RDA Loans to Augusta were provided through the RDA's Low- and Moderate-Income Housing Fund. To date, the City has received no payment on any of the three loans, identified below:

1. Montclair RDA Villa Montclair Loan. The Montclair RDA entered into an Affordable Housing Agreement dated July 1, 1999 with Augusta for Villa Montclair Mobile Home Park, pursuant to which the RDA provided a loan to Augusta in the amount of \$325,000, with interest at 2 percent (Montclair RDA Villa Montclair Loan), a maturity date of July 1, 2030, and a requirement that payment be amortized over 24 years.
2. Montclair RDA Monterey Manor Loan. The Montclair RDA entered into an Affordable Housing Agreement dated December 1, 2000 with Augusta for Monterey Manor Mobile Home Park, pursuant to which the RDA provided a Residual Receipts Loan to Augusta in the amount of \$750,000, with interest at 2 percent (Montclair RDA Monterey Manor Loan), a maturity date of December 20, 2031, and a requirement that payment be amortized over 24 years.
3. Montclair RDA Hacienda Loan. The Montclair RDA entered into an Affordable Housing Agreement dated November 1, 2002 with Augusta for Hacienda Mobile Home Park, pursuant to which the RDA provided a Residual Receipts Loan to Augusta in the amount of \$1 million (Montclair RDA Hacienda Loan), amended to \$1.4 million via Agreement No. 05-115, dated August 1, 2005, with interest at 2 percent, a maturity date of November 1, 2037, and a requirement that payment be amortized over 24 years.

Bond Financing. In order to facilitate the acquisition of mobile home parks in Montclair by Augusta, the City and RDA agreed to the issuance of a series of three separate Mobile Home Park Revenue Bonds (the Prior Bonds)—each series issued between the RDA and The Bank of New York Mellon Trust Company, N.A., with bond proceeds loaned to Augusta, as discussed below:

1. Villa Montclair Project. In July 1999, the RDA facilitated issuance of revenue bonds (Series 1999A—the Mobile Home Park Revenue Bonds, in the principal amount of \$3.600 million) for the purpose of loaning the proceeds to Augusta (at the time, Augusta Homes Villa Montclair) to enable Augusta to finance acquisition and maintenance of the Villa Montclair Mobile Home Park. Augusta was responsible for all debt service related to the bonds. Augusta agreed to affordable housing covenants that would be maintained throughout the life of the Series 1999A Mobile Home Park Revenue Bonds.
2. Monterey Manor Project. In December 2000, the RDA facilitated issuance of bonds (Series 2000—the Mobile Home Park Revenue Bonds, in the principal amount of \$6.360 million) for the purpose of loaning the proceeds to Augusta (at the time, Augusta Homes Villa Montclair) to enable Augusta to finance acquisition and maintenance of the Monterey Manor Mobile Home Estates. Augusta was responsible for all debt service related to the bonds. Augusta agreed to affordable housing covenants that would be maintained throughout the life of the Series 2000 Mobile Home Park Revenue Bonds.
3. Hacienda Project. In November 2002, the RDA facilitated issuance of bonds (Series 2000A—the Mobile Home Park Revenue Bonds in the principal amount of \$10.750 million) for the purpose of loaning the proceeds to Augusta (at the time, Augusta Homes) to enable Augusta to finance acquisition and maintenance of the Hacienda Mobile Home Park. Augusta was responsible for all debt service related to the bonds. Augusta agreed to affordable housing covenants that would be maintained throughout the life of the Series 2002 Mobile Home Park Revenue Bonds.

2012 Bond Refinancing. In June 2012, Augusta determined to refinance the Prior Bonds through the Independent Cities Finance Authority (ICFA), a joint powers authority organized under California law, to issue its Mobile Home Park Revenue Refunding Bonds Series 2012A and its Mobile Home Park Subordinate Revenue Refunding Bonds Series 2012B (the 2012 Bonds), with proceeds loaned to Augusta (now, Augusta Communities LLC, a California Limited Liability Company) to (i) refund the Prior Bonds; (ii) finance certain renovations and improvements to the Projects; (iii) fund certain reserves; and (iv) finance the costs associated with issuing the 2012 Bonds. In order to issue the Indenture of Trust and refund the Prior Bonds with proceeds of the 2012 Bonds, Augusta requested and received written consent from the City Council.

Consistent with previous Indenture of Trusts, the Montclair Housing Authority (prior to the 2012 Bond Refinancing, the RDA had been dissolved in compliance with *California Redevelopment Association et al. v. Ana Matosantos*) and Augusta, in relation to the 2012 Bonds, entered into a regulatory agreement and declaration of restrictive covenants with respect to each Project to set forth affordability covenants. At the same time, the City, as successor to the RDA, released existing regulatory agreements recorded on the Projects.

Augusta also requested that the City, as successor to the RDA, agree to subordinate the Affordable Housing Agreements, the Memorandums of Understanding, the Montclair RDA Loans, the Montclair RDA Residual Receipt Loan Notes, and the Montclair RDA Loan Mortgages with respect to each Project, and the Montclair City Council so agreed.

The Montclair Housing Authority, working with ICFA, facilitated refinancing of the Prior Bonds. The Series 2012A Mobile Home Park Revenue Refunding Bonds principal amount was \$20,125,000 and the Series 2012B Mobile Home Park Subordinate Revenue Refunding Bonds principal amount was \$785,000. The 2012 Revenue Bonds were (i) used to refund the Prior Bonds, and (ii) allocated for maintenance of, and improvements to, the Projects. Augusta is responsible for all debt service related to the 2012 Bonds. Augusta agreed to bond affordability covenants, Affordable Housing Agreement, and a Memorandum of Understanding related to issuance of the 2012 Bonds. Affordability covenants are to be maintained throughout the life of the 2012 Bonds.

2022 Bond Refinancing. Augusta is now seeking to refinance the 2012 Bonds in a principal amount that has not yet been determined; however, refinancing is projected to generate approximately \$7.5 million in new bond money. Pursuant to requirements of ICFA and provisions of the 2012 Bonds, Augusta is required to secure the City's written approval to refinance the bonds; although, the City is not required to consent to the refinancing proposal.

According to the Indenture of Trust for the proposed 2022 bond refinancing (the 2022 Bonds), refunding the 2012 Bonds would extend amortization on the 2022 Bonds to 2056, and Affordability Covenants would be extended to 2042. Due to the Montclair City Council's fiduciary responsibilities to the community, it is imperative that due diligence be conducted on the proposed refunding of the 2012 Bonds, with due diligence to include, but not be limited to, the following inquiries:

1. Verification of accrued balances of existing notes.
2. Verification of appraised market values of Montclair Projects.
3. Status of property tax in-lieu payments.
4. Application of the City's Rent Control Ordinance within the Montclair Projects.
5. Payment priority assigned to RDA Loans as directed by Augusta's Board of Directors, and impact of refunding on loan repayment.
6. Allocation of \$7.5 million in new capital proceeds from the proposed 2022 Bonds toward each Montclair Project.
7. Historical review of capital improvements and fund distribution for Montclair Projects, and current capital improvement needs.
8. Allocation of bond proceeds for projects outside of Montclair.
9. Maintenance and priority of bond affordability covenants as they related to the proposed 2022 Bonds.
10. City succession to ICFA as bond issuer.

To facilitate the due diligence process and respond to the request from Augusta to refund the 2012 Bonds, City staff recommends entering into Agreement No. 21-83 with CSG Advisors to serve as an Independent Municipal Advisor to evaluate Augusta's proposal to refund the 2012 Bonds.

CSG's scope of work includes the following:

1. Review existing financial documents as they relate to the 2012 Bonds, and data and documents provided by Augusta related to the proposed 2022 Indenture of Trust.
2. Review with the City and its legal counsel, the implications of the refunding proposal on existing agreements or documents, or subsequent changes, if any, needed to such agreements or documents.
3. Consider alternative approaches to the proposed 2022 Indenture of Trust, or engage in further inquiry that may be necessary in order to evaluate the proposed refunding of the 2012 Bonds.
4. Produce an evaluation document summarizing CSG's work, which can be used to facilitate any formal actions required of the City to enact the refunding proposal or any recommended alternative.
5. Participate in meetings and/or presentations to stakeholders regarding findings and/or recommendations.

CSG anticipates completing its Scope of Work on or before March 31, 2022.

FISCAL IMPACT: CSG works on a non-contingent basis, charging on an hourly basis up to a preliminary not-to-exceed amount, as indicated below, subject to change upon approval by the City.

- CSG's proposed preliminary "not-to-exceed" amount is \$6,500.
- CSG's hourly rate for the principal is \$300.
- CSG's hourly rate for administrative assistance is \$90.
- CSG would be reimbursed for any expenses including transportation, lodging, and meals at cost; however, no chargeable attributable expenses are anticipated.

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

1. Approve Agreement No. 21-83 with CSG Advisors for Municipal Advisory Services to evaluate the Augusta Communities LLC's proposed 2022 Indenture of Trust to refinance its Series 2012A Mobile Home Park Revenue Refunding Bonds and Series 2012B Mobile Home Park Subordinate Revenue Refunding Bonds issued by the Independent Cities Finance Authority.
2. Authorize City Manager Edward C. Starr to sign Agreement No. 21-83 with CSG Advisors.

Via Email Delivery

November 17, 2021

Mr. Edward C. Starr
 City Manager
 City of Montclair
 5111 Benito Street
 Montclair, CA 91763
ecstarr@cityofmontclair.org

RE: Municipal advisory services to evaluate the Augusta Communities proposal to refinance its Series 2012A and Series 2012B Mobile Home Park Revenue Bonds (collectively, the 2012 Bonds) issued by the Independent Cities Finance Authority

Mr. Starr:

CSG appreciates the opportunity to provide this Scope of Work and Fee Agreement to serve as an Independent Registered Municipal Advisor (IRMA) to the City of Montclair (the City) to evaluate a proposal by Augusta Communities (the Borrower) to refinance its 2012 Bonds without making any payments pursuant to certain Affordable Housing Agreements between the Borrower and the City's Housing Authority.

CSG Understanding of the City's Needs. It is our understanding that the City is seeking an IRMA to assist in understanding the Borrower's proposal, and to consider its acceptability or any alternatives thereto as relates to (i) the Borrower's financial obligation to the City's Housing Authority, which is the successor housing agency of the City; as beneficiary under the Affordable Housing Agreements, and/or (ii) other benefits derived by the City with respect to the affordability covenants provided under applicable Regulatory Agreements, which the Borrower proposes to extend to 2042 (collectively, the Derived Benefits to the City). The Derived Benefits to the City from the Borrower's proposal are considered in the context of the Borrower's desire to finance, in tandem with the refinancing of the 2012 Bonds, certain reserve funds and capital projects ahead of its financial obligation under the Affordable Housing Agreements.

CSG Scope of Work. Upon acknowledgment below and by direction of the City, CSG would:

1. Review existing financing documents as relates to the 2012 Bonds, and Borrower information as relates to their proposal (or request additional information as needed to understand their proposal).
2. Review with the City and its legal representatives, the implications of the proposal on existing agreements or documents, or subsequent changes (or not) needed to such agreements or documents.
3. Consider alternative approaches, or engage in further inquiry, which the City may want in order to evaluate the proposal or such alternatives.
4. Produce an evaluation memo that summarizes CSG's work with City staff and its legal counsel, which can be used by the City to help facilitate any formal actions required of the City to enact the proposal or any recommended alternative.
5. Participate in meetings or presentations to stakeholders regarding findings and/or recommendations.

Information Needs from the District. CSG would rely on certain information from the City and/or the Borrower to conduct its analysis as follows:

1. Existing bond documents, Affordable Housing Agreements, Regulatory Agreements, and other relevant documents pertaining to the 2012 Bonds.
2. Summary of the Borrower’s proposal, preferably in writing provided by the Borrower.
3. Historical cash flows of the City-related projects, and a going forward proforma for the City-related projects.
4. Sources and uses of funds of the New Bonds, broken down on a project-by-project basis.
5. Additional information as may be needed based on the review of the above.

Fee Approach. CSG would work on a non-contingent basis charging on an hourly basis to a preliminary not-to-exceed amount. Such not-to-exceed amount would be subject to change with approval by the City in writing. Hourly fees would be based on the following fee schedule:

Title	CSG Personnel	Hourly Rate*
Chairman	As needed	\$325
Principal	Scott Smith	\$300
Vice President	As needed	\$275
Senior Associate	As needed	\$225
Administrative	As needed	\$90

* Subject to annual 3% escalation

CSG’s proposed preliminary not-to-exceed amount is as follows:

	Preliminary Not-to-Exceed Fee
Evaluation & Presentation	\$6,500.00

Expenses, if applicable. CSG would be reimbursed for transportation, lodging, meals, at cost. CSG does not expect there to be chargeable expenses attributable to the Scope of Work unless the City requests CSG to travel for any meetings.

Term of Engagement. The Scope of Work, as requested by the City, and would be completed by December 31, 2022.

Conflicts of Interest and Other Disclosure Matters. As of the date of this Acknowledgment there are no actual or potential conflicts of interest that CSG is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If CSG becomes aware of any potential conflict of interest that arise after this disclosure, CSG will disclose the detailed information in writing to the District in a timely manner.

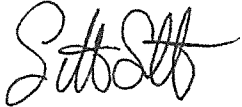
The fee paid to CSG increases the cost to the City. The increased cost occurs from compensating CSG for municipal advisory services provided.

Legal Events and Disciplinary History. CSG does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The District may electronically access CSG’s most recent Form MA and each most recent Form MA-I filed with the Commission at the following website: www.sec.gov/edgar/searchedgar/companysearch.html.

There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Thank you for your consideration of us.

Sincerely,



Scott Smith, Principal
CSG Advisors Incorporated

ACKNOWLEDGED

Edward C. Starr, City Manager
City of Montclair

Dated: _____



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	PDT175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	8	PREPARER:	M. BUTLER

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-84 WITH LOMA LINDA UNIVERSITY CHILDREN'S HOSPITAL, A MEMORANDUM OF UNDERSTANDING FOR THE MONTCLAIR POLICE DEPARTMENT'S USE OF THE CHILDREN'S ASSESSMENT CENTER

CONSIDER AUTHORIZING EXECUTIVE DIRECTOR OF PUBLIC SAFETY/POLICE CHIEF ROBERT AVELS TO SIGN AGREEMENT NO. 21-84

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-84, a Memorandum of Understanding (MOU) between Loma Linda University Children's Hospital (LLUCH) and San Bernardino County Police Departments for use of the Children's Assessment Center (CAC) to interview, examine, and diagnose children of suspected sexual and/or physical abuse.

A copy of proposed Agreement No. 21-84 is attached for the City Council's review and consideration.

BACKGROUND: For many years, the Montclair Police Department and the County's local law enforcement agencies have entered into a contractual public-private endeavor with LLUCH to provide medical and forensic services related to children suspected of being abused. The services performed at the jointly operated CAC include providing a medical sexual and/or physical abuse evidentiary examination by a qualified examiner that complies with the California Medical Protocol for Examination of Sexual Assault and Child Abuse Victims. Prior to conducting the forensic interview, the examiner reviews records relative to the child and consults with the agency as to the content and purpose of the interview. Upon completion of the examination, the CAC provides the law enforcement agency with an original copy of the completed report of the outcome of the evaluation. These forensic interviews and examinations gather information about incidents of alleged child abuse and play an important part in the investigation process. Thus, staff would like to continue receiving the services provided by LLUCH's Children's Assessment Center.

The San Bernardino County Police Departments are required to pay an annual membership fee to LLUCH based on population size entitling them to the services included in the MOU, which is effective as of July 1, 2021, and expires June 30, 2024. Last fiscal year, the annual membership fee for the Montclair Police Department was \$5,000 plus a fee of \$300 per medical exam/interview. According to the proposed MOU, the City would pay a \$5,000 annual membership fee to receive unlimited assessments at no additional cost.

FISCAL IMPACT: Based on the City's current population, the annual membership fee would be \$5,000. If authorized by the City Council, funding for Agreement No. 21-84 is included in the Police Department's Fiscal Year 2021-22 Budget in Investigations Medical Services Account No. 1001-4425-52460-400-00000.

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

1. Approve Agreement No. 21-84 with Loma Linda University Children's Hospital, a Memorandum of Understanding for the Montclair Police Department's use of the Children's Assessment Center.
2. Authorize Executive Director of Public Safety/Police Chief Robert Avels to sign Agreement No. 21-84.

MEMORANDUM OF UNDERSTANDING

between

Loma Linda University Children's Hospital

And

San Bernardino County Police Departments .

for

Use of Children's Assessment Center

July 1, 2021

WHEREAS, there exists a need for additional medical and forensic services to examine and diagnose children of suspected child abuse; and

WHEREAS, the County of San Bernardino and its affiliates, and Loma Linda University Children's Hospital (LLUCH), have entered into a contractual public-private endeavor to provide these services at the jointly operated Children's Assessment Center (CAC); and

WHEREAS, because of the above-referenced public-private endeavor, the LLUCH is offering the County's local law enforcement and other child protecting Agencies an opportunity to obtain the medical and forensic services needed to examine and diagnose children of suspected sexual and/or physical abuse;

NOW THEREFORE, the LLUCH and local law enforcement Agencies and other child protecting Agencies, hereinafter referred to as Agencies, mutually agree to the following terms and conditions:

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I. DEFINITIONS

- A. Agencies - For purposes of this MOU, local law enforcement and other child protecting Agencies able to access the services of the Center.
- B. Children's Assessment Center (CAC) - Referred to as the Center. For purposes of this MOU, shall only be that portion of the Center which is for the medical and forensic interview, examination and diagnosis of suspected child sexual and/or physical abuse. It does not include the direct treatment of the emotional, mental or physical consequences of abuse.
- C. Loma Linda University Children's Hospital (LLUCH) - Will provide the Center's Medical Director who is responsible for the medical direction of the Center.

II. SERVICES TO BE PERFORMED

- A. The Center shall provide a medical sexual and/or physical abuse evidentiary examination by an examiner qualified for the practice of medical diagnosis of child abuse as well as qualified for practicing their medical specialty. The examination shall include medical history, physical examination, and if medically appropriate, an in-depth examination of the genitalia using a colposcope. The medical examination shall comply with the California Medical Protocol for Examination of Sexual Assault and Child Abuse Victims.
- B. The Center shall provide the Agencies an original copy of the completed report of the outcome of the evaluation upon completion of the examination.
- C. The Center's Medical Director shall have the absolute right and discretion to refuse to conduct a medical examination or order certain laboratory tests with respect to a particular child.
- D. Qualified and trained Masters level professional with Child Forensic Interview Training (CFIT) and certification to perform the forensic interview(s) of a child suspected of being abused. The Forensic Interview (FI), shall work under the direction and control of the Medical Director and the Center's Manager.
 - 1. All forensic interviews will be memorialized, and a copy of the interview evidence will be provided to the referring Agencies.
 - 2. Prior to conducting the forensic interview, the FI will review records relative to the child which have been provided to the Center and will consult with the authorized individual from the Agencies as to the content and purpose of the interview.

III. OBLIGATIONS OF AGENCIES

- A. The Agencies shall pay to LLUCH an annual membership fee calculated by population size, as outlined in Exhibit A, which entitles them to the services outlined in Section II.
- B. No changes to the fee structure or calculations will be permitted within the first year of this Agreement. All changes thereafter are to be reassessed on

an annual basis and must be stated in a written amendment to this Agreement.

IV. INVOICE AND PAYMENT PROCEDURES

A. ANNUAL MEMBERSHIP FEE

LLUCH shall submit an invoice to the Agencies for the membership fee annually. The Agencies shall pay the membership fee within forty-five (45) days of receiving the invoice. The Agencies must submit payment within forty-five (45) days to continue to utilize the Center's services.

1. The annual membership entitles the Agencies access to services outlined in Section II of the agreement, it does not include the direct treatment of the emotional, mental or physical consequences of abuse. LLUCH reserves the right and responsibility to bill and collect from third party payors (including Medi-Cal and private insurance) any fees for evidentiary medical examination rendered by CAC during any client session.

C. BILLING AND PAYMENT ADDRESSES

1. The Agencies' designated person and address for billing purposes shall be:

BARSTOW POLICE DEPARTMENT
Attn:
220 East Mountain View Street, Barstow, CA 92311

CHINO POLICE DEPARTMENT
Attn:
5450 Walnut Avenue, Chino, CA 91708

COLTON POLICE DEPARTMENT
Attn:
650 N. La Cadena Drive, Colton, CA 92324

FONTANA POLICE DEPARTMENT
Attn:
17005 Upland Avenue, Fontana, CA 92335

MONTCLAIR POLICE DEPARTMENT
Attn:
4870 Arrow Highway, Montclair, CA 91763

ONTARIO POLICE DEPARTMENT
Attn: Fiscal Services
2500 South Archibald Avenue, Ontario, CA 91761

REDLANDS POLICE DEPARTMENT
Attn:
30 Cajon, Post Office Box 1025, Redlands, CA 92373

RIALTO POLICE DEPARTMENT
Attn:
128 North Willow Avenue, Rialto, CA 92376

SAN BERNARDINO POLICE DEPARTMENT
Attn: Finance Unit
290 North "D" Street, San Bernardino, CA 92402

UPLAND POLICE DEPARTMENT
Attn: Lieutenant
1499 West 13th Street, Upland, CA 91786

2. Payments shall be made payable to:

LOMA LINDA UNIVERSITY CHILDREN'S HOSPITAL

The address and designated person for billing purposes shall be:
CHILDREN'S ASSESSMENT CENTER
Attn: Program Administrator
700 E. Gilbert Street, San Bernardino, CA 92415

V. INDEMNIFICATION AND INSURANCE

A. INDEMNIFICATION

Each party to this agreement agrees to indemnify and hold harmless the other party and its officers, employees, agents and volunteers from any and all claims or actions resulting from the other party's acts, errors or omissions and for any costs or expenses incurred by the party on account of any claim therefore.

B. INSURANCE

Each Agency to this agreement is a public entity and is legally self-insured under the laws of the State of California. LLUCH is also legally self-insured under the laws of the State of California.

VI. TERM

This Memorandum of Understanding (MOU) is effective as of July 1, 2021 and expires June 30, 2024 but may be terminated earlier in accordance with provisions of Section VII of this MOU.

VII. EARLY TERMINATION

This MOU may be terminated without cause upon thirty (30) days written notice by either Agency. LLUCH is authorized to exercise rights as to all or any of the Agencies with respect to any termination of this MOU. The Agency's Director, or his/her appointed designee, has authority to terminate this MOU on behalf of the Agencies.

VIII. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this MOU, the notices

shall be in writing and mailed to the following respective addresses listed below.

1. Agencies:
BARSTOW POLICE DEPARTMENT
Attn:
220 East Mountain View Street, Barstow, CA 92311
CHINO POLICE DEPARTMENT
Attn:
5450 Guardian Way, Chino, CA 91710
COLTON POLICE DEPARTMENT
Attn:
650 N. La Cadena Drive, Colton, CA 92324
FONTANA POLICE DEPARTMENT
Attn:
17005 Upland Avenue, Fontana, CA 92335
MONTCLAIR POLICE DEPARTMENT
Attn:
4870 Arrow Highway, Montclair, CA 91763
ONTARIO POLICE DEPARTMENT
Attn: Fiscal Services
2500 South Archibald Avenue, Ontario, CA 91761
REDLANDS POLICE DEPARTMENT
Attn:
30 Cajon, Post Office Box 1025, Redlands, CA 92373
RIALTO POLICE DEPARTMENT
Attn:
128 North Willow Avenue, Rialto, CA 92376
SAN BERNARDINO POLICE DEPARTMENT
Attn: Finance Unit
290 North "D" Street, San Bernardino, CA 92402
UPLAND POLICE DEPARTMENT
Attn: Lieutenant
1499 West 13th Street, Upland, CA 91786
2. LLUCH:
LOMA LINDA UNIVERSITY CHILDREN'S HOSPITAL
Ambulatory Administration
11234 Anderson Street, CH1816
Loma Linda, CA 92354

- B. Nothing contained in this MOU shall be construed as creating a joint venture, partnership or employment arrangement between the Parties hereto, nor shall either Agency have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Agency hereto.
- C. Agencies shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of LLUCH in an attempt to secure favorable treatment regarding this MOU.

LLUCH, by written notice, may immediately terminate any MOU if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of LLUCH with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a MOU has been awarded.

Agencies shall immediately report any attempt by a LLUCH officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Agencies. The report shall be made to the supervisor or manager charged with supervision of the employee or to LLUCH's Administrative Office. In the event of a termination under this provision, LLUCH is entitled to pursue any available legal remedies.

- D. No waiver of any of the provisions of the MOU shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Agencies. No course of dealing and no delay or failure of an Agency in exercising any right under the MOU shall affect any other or future exercise of that right or any exercise of any other right. An Agency shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- E. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both Agencies as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Agencies hereto.
- F. If any provision of the MOU is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the MOU shall not be affected.
- G. This MOU shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Agencies agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in the County of San Bernardino, for any and all disputes resulting under this MOU, to the exclusion of all other federal and state courts.
- H. This MOU is not assignable by Agencies either in whole or in part.

- I. Agencies shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this MOU, except for statistical information not identifying any participant. The Agencies shall not use or disclose any identifying information for any other purpose other than carrying out the Agency's obligations under this MOU, except as may be otherwise required by law. This provision will remain in force even after the termination of the MOU.

Moreover, Agencies and LLUCH both recognize the breadth of laws and regulatory requirements concerning the confidentiality of child sexual abuse information and will ensure that their employees, volunteers and agents are familiar with the lawful release and exchange of such confidential information.

- J. Agencies and LLUCH shall comply with all Federal, State and local laws and regulations and requirements.

XI. CONCLUSION

- A. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.

Signatures to Follow

LOMA LINDA UNIVERSITY CHILDREN'S HOSPITAL RIALTO POLICE DEPARTMENT

1/14/21
Name: Peter Baker
Title: Senior Vice President
Date: 4/15/21

Name: Mark P. Kling
Title: Chief of Police
Date:

BARSTOW POLICE DEPARTMENT

SAN BERNARDINO POLICE DEPARTMENT

Name: Andrew Espinoza, Jr.
Title: Chief of Police
Date:

Name: Eric McBride
Title: Chief of Police
Date:

CHINO POLICE DEPARTMENT

UPLAND POLICE DEPARTMENT

[Signature]
Name: Wes Simmons
Title: Chief of Police
Date: 12-1-2021

Name: Darren Goodman
Title: Chief of Police
Date:

COLTON POLICE DEPARTMENT

Name: Henry Dominguez
Title: Chief of Police
Date:

FONTANA POLICE DEPARTMENT

[Signature]
Name: William Green
Title: Chief of Police
Date: 11-22-21

MONTCLAIR POLICE DEPARTMENT

Name: Robert Avels
Title: Chief of Police
Date:

ONTARIO POLICE DEPARTMENT

[Signature]
Name: Michael Lorenz
Title: Chief of Police
Date: 11/22/21

REDLANDS POLICE DEPARTMENT

Name: Christopher R. Catren
Title: Chief of Police
Date:

Exhibit A

Fee Structure: Fees are calculated by population. Cities with a population over 50,000 pay \$5,000 membership fee plus 10 cents per resident over 50,000 residents. Cities with populations below 50,000 residents pay the \$5,000 membership fee only. All jurisdictions paying fees are entitled to receive unlimited assessments at no additional cost.

Jurisdiction	Population	Annual Fee
San Bernardino Police Department	216,000	\$21,600
Fontana Police Department	214,000	\$21,400
Ontario Police Department	182,000	\$18,200
Rialto Police Department	103,000	\$10,300
Chino Police Department	92,000	\$9,200
Upland Police Department	77,000	\$7,700
Redlands Police Department	72,000	\$7,200
Colton Police Department	55,000	\$5,500
Barstow Police Department	<50,000	\$5,000
Montclair Police Department	<50,000	\$5,000



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	STA650-H1
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	9	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-85 WITH TRANSTECH TO PREPARE A SCHOOL AREA SIGNAGE PLAN FOR VERNON MIDDLE SCHOOL		

REASON FOR CONSIDERATION: Traffic engineering services are required for the development of a plan for the installation of signage as part of the Safe Routes to School Program. Agreements for design services are subject to City Council approval.

BACKGROUND: The Safe Routes to School Plan (the Plan) is a comprehensive framework for the City to improve the health, safety, and equity of students, parents, and the community in the surrounding areas for seven elementary schools, one middle school, and one high school in Montclair.

The Plan builds upon the international Safe Routes to School (SRTS) movement. The movement strives to make communities safer and more convenient for children and their families to walk and bike to school. It is supported by six key components, often known as the six E's of SRTS. The six E's are engagement, equity, education, encouragement, engineering, and evaluation.

Engagement strategies strive to bring different stakeholders together and collaborate on SRTS initiatives. Encouragement efforts generate enthusiasm and interest in walking and biking through programs, events, and activities. Education programs equip students and community members with the knowledge to walk and bike safely and understand the benefits of walking, biking, and other active modes of transportation. Engineering or physical improvements on roadways create safer and more comfortable walking and biking environments. Evaluation programs monitor the progress of any implemented non-infrastructure programs and engineering improvements to support SRTS goals.

Transtech will analyze the existing school area signage for Vernon Middle School and make recommendations for adjustment, removal, and installation of new signage to comply with the latest edition of the California Manual on Uniform Traffic Control Devices (CAMUTCD). Transtech will review the existing signage along San Bernardino Street from Benson Avenue to Central Avenue, Vernon Avenue from San Bernardino Street to Benito Street, and Benson Avenue from Palo Verde Street to Benito Street.

FISCAL IMPACT: The Safe Routes to School Program was included in the 2021 Lease Revenue Bond Funds. The professional services agreement would be funded using these funds in an amount not to exceed \$3,500.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 21-85 with Transtech to prepare a school area signage plan for Vernon Middle School.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

DESIGN SERVICES FOR SCHOOL AREA SIGNAGE

THIS AGREEMENT is made and effective as of December 10, 2021, between the City of Montclair, a municipal corporation ("City") and Transtech, a California corporation ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on December 10, 2021 and shall remain and continue in effect for a period of six months until tasks described herein are completed, but in no event later than June 10, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and in a manner consistent with the applicable standard of care, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services under similar circumstances as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all services performed by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. **This amount shall not exceed**

\$3,500 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating

Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. However, if the City modifies or uses the Consultant's materials for any project other than the one for which they were prepared, the City does so at its sole risk. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Indemnity and Hold Harmless for Claims Related to Design Professional Services. Consultant shall indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified

Parties”), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to reasonable legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), to the extent caused by or arising out of the negligent acts or omissions, recklessness, or intentional misconduct of Consultant, including its subcontractors, employees, agents, and other persons or entities for whom Consultant is legally liable. The Consultant shall reimburse reasonable defense fees and costs to the extent a claim is determined to have been caused by the negligence, recklessness, or willful misconduct of Consultant, or as the parties otherwise agree in settlement.

(b) General Indemnity for Claims Unrelated to Design Professional Services.

To the fullest extent permitted under California law, Consultant shall indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including reasonable attorney’s fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant’s officers, agents, representative, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, to the extent caused by or arising out of all negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant’s employees or agents, are or may be considered and treated as employees of the City, or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties under this paragraph shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Consultant’s obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subcontractors and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties’ benefit, any and all damages, fines, penalties related to the loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant’s officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City’s Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the services and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City’s rights to contribution from Consultant, or for the City to dispute Consultant’s refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for claims or losses to the extent caused by the sole or active negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers’ compensation act or similar act. The Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant’s indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant’s covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

Without limiting the indemnity provisions of this Agreement, the Consultant shall procure and maintain in full force and effect during the term of this Agreement, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office “occurrence” form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$3,000,000 per occurrence, and \$5,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering “Any Auto” (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$5,000,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers’ Compensation: Workers’ Compensation Insurance, as required by the State of California and Employer’s Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$2,000,000 each claim. Covered professional services shall include all services to be performed under the Agreement.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to “Ongoing Operations”
2. Exclude “Contractual Liability
3. Restrict coverage to the “Sole” liability of Consultant

4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the services or operations performed by or on behalf of the Consultant.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium. Consultant shall provide thirty (30) days written notice to City prior to implementation of a reduction of limits or material change of insurance coverage as specified herein.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such

coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

Contractor agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Agreement. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

In the event that the Consultant's services are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the services because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be

maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Consultant shall be responsible for causing Subcontractors to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as board as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to

Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of

coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the

ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	Monica Heredia, P.E. City Engineer City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant:	Transtech 13367 Benson Avenue Chino, CA 91710
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17. ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Contractor from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Contractor in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Contractor shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into 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.

21. CONTENTS OF REQUEST FOR PROPOSALS

~~_____ Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.~~

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based

upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to additional services, disputed services, claims, and/or changed conditions have been followed by Consultant. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF MONTCLAIR

CONSULTANT / TRANSTECH

By: _____
Bill Ruh, Mayor Pro Tem

By: _____
Name/Title:

Attest:

By: _____
Andrea Myrick, City Clerk

By: _____
Name/Title:

Approved as to Form:

By: _____
Diane Robbins, City Attorney

December 6, 2021

Monica Heredia, P.E., Public Works Director/City Engineer
City of Montclair
5111 Benito Street
Montclair, CA 91763
mheredia@cityofmontclair.org

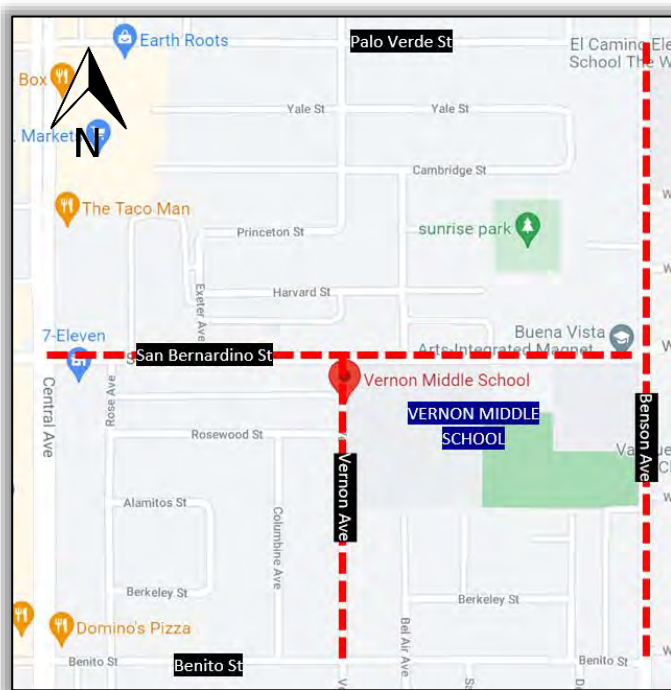


Subject: Transtech Proposal to Prepare School Area Signing for Vernon Middle School

Dear Monica:

Transtech is pleased to submit this proposal for preparing School Area signing for Vernon Middle School in the City of Montclair. Our scope of services is provided below:

SCOPE OF SERVICES:



TASK & FEE BREAKDOWN	
Tasks:	<ol style="list-style-type: none"> 1. Review the available Safe Route to School Plan for the school for consistency. 2. Review the existing school area signing for the following streets and make recommendations for adjustment, removal, or addition of new signing/crosswalk striping to comply with the latest edition of the California Manual on Uniform Traffic Control Devices (CAMUTCD): San Bernardino St (Benson Ave to Central Ave), Vernon Ave (San Bernardino St to Benito St), and Benson Ave (Palo Verde St to Benito St) 3. Prepare concept exhibits with recommended signing and crosswalk enhancements on aerial photos with enough detail for installation purposes.
Fee	Not to exceed \$3,500.

Thank you for the opportunity to submit this proposal. If you have any questions or need additional information, please feel free to contact me at the below information.

Contact Person for this Proposal:

Bahman Janka, PE, Principal Traffic and Transportation Engineer
C (310) 892-2520
E Bahman.Janka@transtech.org



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	SEW080
SECTION:	CONSENT - AGREEMENTS	DEPT.:	COMMUNITY DEV.
ITEM NO.:	10	PREPARER:	S. GUTIERREZ
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-86-I-107 (CASE NO. 2021-40), AN IRREVOCABLE ANNEXATION AGREEMENT WITH POMONA HERSHEY PROPERTIES, LLC FOR 11185 ROSWELL AVENUE, POMONA, CA 91766 (APN 1012-411-51-0000)		

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

BACKGROUND: Proposed Irrevocable Annexation Agreement 21-86-I-107 would allow a connection to the sanitary sewer system owned and operated by the City of Montclair for a 0.88-acre industrial site within the Sphere of Influence of the City. A City-owned, 8-inch diameter sewer line is present and available in Roswell Avenue adjacent to the property's frontage (see Exhibit A).

The County's zoning designation for the site is "Community Industrial (IC)." On May 21, 2021, the County of San Bernardino approved Minor Use Project No. PROJ-2020-00103 allowing the development of a 3,000 square foot office building and two pre-fabricated warehouse structures, totaling 7,000 square feet in area, with associated site improvements. The new development will provide office and storage space for a steel fabricating business. The project is currently under construction.

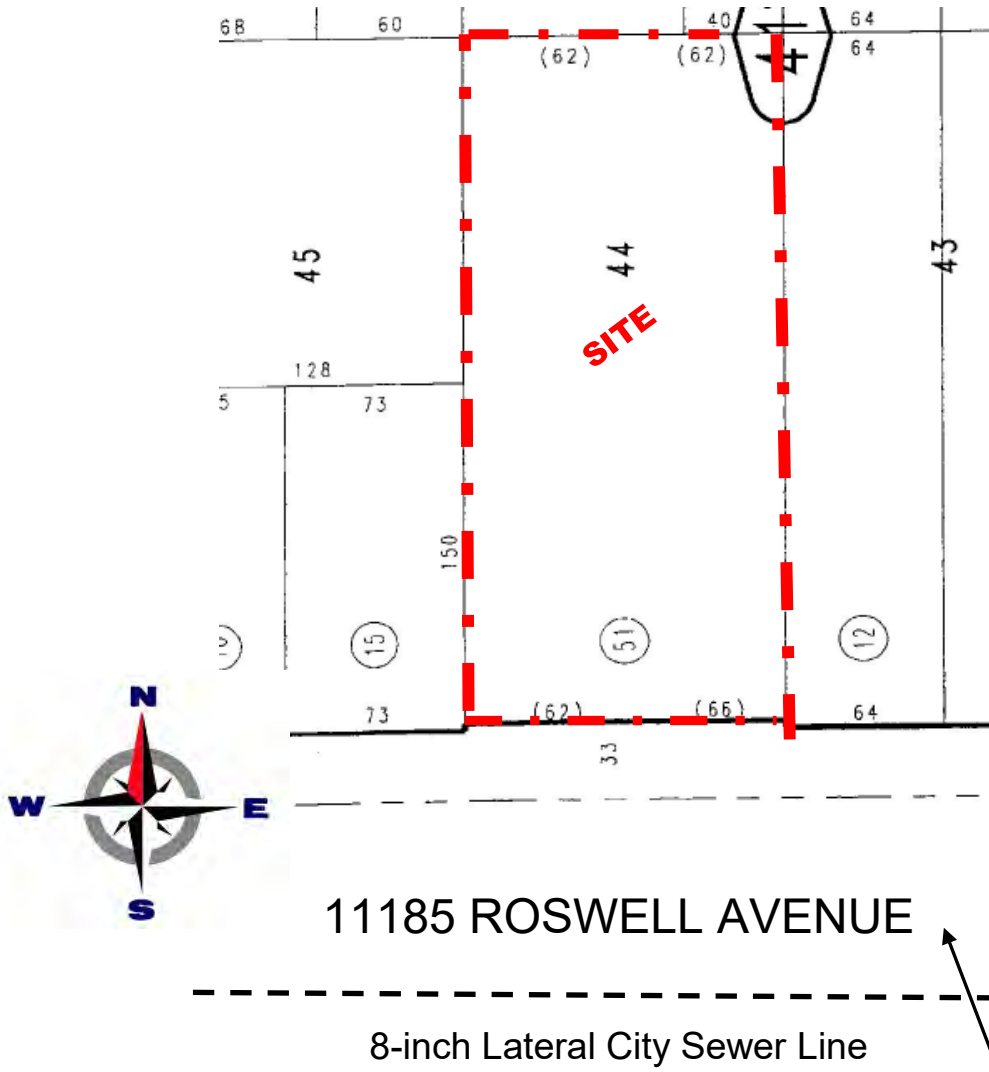
The proposed sewer connection request is consistent with the City's policies and requirements. In exchange, the Agreement would require annexation of the property to the City when feasible at a future date. If approved by the City Council, staff will forward Agreement No. 21-86-I-107 to the Local Agency 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. 21-86-I-107, an Irrevocable Annexation Agreement with Pomona Hershey Properties, LLC for 11185 Roswell Avenue, Pomona, CA 91766 (APN: 1012-411-51-0000).

EXHIBIT A

IAA 21-86-I-107 (CASE 2021-40)



Recording Requested by:

Silvia Gutierrez
City of Montclair

When Recorded Mail To:

Silvia Gutiérrez
Associate Planner
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. 21-86-I-107
AN IRREVOCABLE ANNEXATION AGREEMENT
WITH THE CITY OF MONTCLAIR
AND
POMONA HERSHEY PROPERTIES, LLC
FOR
11185 ROSWELL AVENUE
POMONA, CA 91766
(APN 1012-411-51-0000)**

AGREEMENT NO. 21-86-I-107

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

POMONA HERSHEY PROPERTIES, A CALIFORNIA LIMITED LIABILITY COMPANY
11185 ROSWELL, POMONA, CA 91766-3955 (APN 1012-411-51-0000)

This agreement is entered into this ____ day of _____, 2021, between Pomona Hershey Properties, 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 11185 Roswell, Pomona, CA 91766-3955, the land referred to herein below as referenced by the San Bernardino County Tax Assessor Parcel Number (APN) 1011-411-51-0000, shown as Exhibit "A" attached and is further described as follows:

LOT 44 OF POMONA HOMES ACRES, AS PER MAP RECORDED IN BOOK
25 PAGE 1 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF
SAN BERNARDINO COUNTY

WHEREAS, the subject property is approximately 0.88-acres in total size, and located within unincorporated San Bernardino County and the Sphere of Influence of the City of Montclair; and

WHEREAS, the County zoning designation for the site is "Community Industrial (IC);" and

WHEREAS, on May 21, 2021, the County of San Bernardino approved Minor Use Project No. PROJ-2020-00103 allowing the development of a 3,000 square foot office building, two pre-fabricated warehouse structures, for total development size of 7,000 square feet, and associated site improvements which are currently under construction; and

WHEREAS, the Owner is required and desires to connect the property to the sanitary sewer system in the Roswell 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 parties do agree as follows:

1. Owner does 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 does 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 Roswell 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 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

POMONA HERSHEY PROPERTIES, LLC

William A. Ruh, Mayor Pro Tem

Stephen H. Holmes, Owner

Date: _____

Date: _____

ATTEST:

Andrea M. Myrick, City Clerk

Date: _____

APPROVED AS TO FORM:

Diane E. Robbins, City Attorney

Date: _____



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	EMR150-95
SECTION:	CONSENT - AGREEMENTS	DEPT.:	PUBLIC WORKS
ITEM NO.:	11	PREPARER:	M. PARADIS

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-87 WITH HDR ENVIRONMENTAL, OPERATIONS AND CONSTRUCTION, INC. FOR THE PREPARATION OF A SPILL PREVENTION CONTROL AND COUNTERMEASURE PLAN FOR THE POLICE FACILITY

CONSIDER AUTHORIZING A \$14,200 APPROPRIATION FROM THE CONTINGENCY FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 21-87

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-87 with HDR Environmental, Operations and Construction, Inc., and authorization of a \$14,200 appropriation from the Contingency Fund for the preparation of the required SPCC plan for the Montclair Police Department facility. Preparation of a Spill Prevention Control and Countermeasure (SPCC) plan for the police facility is required by the San Bernardino County Fire Protection District (SBCFPD).

BACKGROUND: In 2007, above-ground fuel storage tanks and two generators with fuel tanks were installed at the Montclair Police Department facility. On October 19, 2021, City staff was contacted by SBCFPD regarding the above-ground fuel storage tanks located at the police facility. Upon inspection of the above-ground fuel storage tanks, the Hazardous Materials Specialist with SBCFPD determined that the fuel storage tanks have a capacity of more than 10,000 gallons of fuel, therefore requiring an engineered SPCC Plan. Staff was also informed that the City must obtain a Hazardous Materials CUPA permit for the above-ground fuel storage tanks.

The Hazardous Materials Specialist provided City staff with a list of environmental consultants to prepare the SPCC plan. Two environmental consultants (Fuel Pros and SCS Engineers) do not prepare SPCC plans. HDR Environmental, Operations and Construction, Inc. provided City staff with a proposal for \$14,200.

FISCAL IMPACT: Should City Council approve this agreement, \$14,200 would be transferred from the Contingency Fund to the General Operating Fund to cover the costs related to this agreement.

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

1. Approve Agreement No. 21-87 with HDR Environmental, Operations and Construction, Inc. for the preparation of a Spill Prevention Control and Countermeasure Plan for the police facility.
2. Authorize a \$14,200 appropriation from the Contingency Fund for costs associated with Agreement No. 21-87.

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

SPCC PLAN PREPARATION FOR THE POLICE FACILITY

THIS AGREEMENT is made and effective as of December 20, 2021, between the City of Montclair, a municipal corporation ("City") and HDR Environmental, Operations and Construction, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on December 20, 2021 and shall remain and continue in effect for a period of twelve months until tasks described herein are completed, but in no event later than December 20, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be performed or change the compensation due to Consultant. City's City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to be Performed or change Consultant's compensation, subject to Section 6 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed

\$14,200 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall total compensation exceed Five Thousand Dollars (\$5,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

7. DEFAULT OF CONSULTANT

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the

terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. However, any modification or reuse of such documents for purposes other than those intended by this Agreement shall be at City's sole risk and without liability to Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, but only to the extent caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its sub consultants, employees, agents, and other persons or entities performing work for Consultant.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Consultant shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent consultants, sub consultants or affiliated or related entities and/or its or their employees, agents and representatives, but only to the extent caused by or arising out of all negligent acts or omissions, or intentional misconduct of Consultant, including its sub consultants, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City, or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence, active negligence, or willful intentional misconduct of the Indemnified Parties. Consultant's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Sub consultants and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Sub consultant, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Sub consultant, Sub consultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, and loss or theft of property of the City to the extent caused by or arising out of the negligent acts or omissions or intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent consultants, sub consultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City's rights to contribution from Consultant, or for the City to dispute Consultant's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for claims or losses caused by the sole negligence, active negligence, or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers' compensation act or similar act. The Consultant expressly waives any statutory immunity under such

statutes or laws as to the Indemnified Parties. The Consultant's indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant's covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances, provided that any modification of these requirements will require approval from Consultant.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Consultant shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$1,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$1,000,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$1,000,000 each claim. Covered professional services shall specifically include the types of work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of consultant
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037.

Primary Insurance: This insurance shall be primary and any other insurance, whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement, shall be in excess of, and shall not contribute with, this insurance. Coverage shall be at least as broad as ISO CG 20 01 04 13.

(2) Auto Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents, and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or the coverage materially changed until a thirty (30) day written notice of cancellation has been served upon the City except ten (10) days shall be allowed for non-payment of premium.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require redacted copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant under the indemnity provisions of this Agreement. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold

any payment due Consultant until Consultant has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subconsultants

Consultant shall be responsible for causing Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subconsultants' policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as good as CG 20 38 04 13.

11. INDEPENDENT CONSULTANT

(a) Consultant is and shall at all times remain as to the City a wholly independent consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

13. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subconsultant. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: Monica Heredia, P.E.
City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant: Bryce Langley, CHMM, REM
HDR Environmental, Operations and
Construction, Inc.
369 Inverness Parkway, Suite 325
Englewood, CO 80112

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Consultant from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Consultant in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into 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.

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit "A" hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

26. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

27. NO THIRD PARTY BENEFICIARIES

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

31. ALLOCATION OF RISK

City and Consultant have evaluated the risks and rewards associated with this Agreement, including Consultant's fee relative to the risks assumed, and agree to allocate certain of the risks so, to the fullest extent permitted by law and notwithstanding anything to the contrary in this Agreement, the total aggregate liability of Consultant (and its related corporations, sub consultants and employees) to City and anyone claiming by, through or under City shall be limited to the amount of \$50,000, for any and all injuries, damages, claims, losses, or expenses (including attorney and expert fees) arising out of Consultant's services or this Agreement regardless of the cause(s) or the theory of liability, including negligence, indemnity, or other recovery.

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

CITY OF MONTCLAIR

CONSULTANT

By: _____
Bill Ruh, Mayor Pro Tem

By: _____
Bryce Langley, CHMM, REM
Senior Vice President

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

EXHIBIT A



December 2, 2021

Mr. Mathew Paradis
City of Montclair
5111 Benito Street
Montclair, CA 91763

Reference: *Proposal for Spill Prevention, Control, and Countermeasures (SPCC) Plan Development and SPCC Training*

Dear Mr. Paradis:

HDR Environmental, Operations and Construction Inc. (HDR) is pleased to present this proposal to provide environmental compliance support for the following tasks at the City of Montclair Police Department located at 4870 E Arrow Highway in Montclair, CA:

Task	Description	Due Date	Estimated Cost to Complete
1.	Project Management	At project completion	\$1,715
2.	SPCC Plan Update	Draft due within 30 days of site visit	\$9,410
3.	OPTIONAL TASK: SPCC Training	Draft due within 30 days of Final SPCC Plan	\$3,075
TOTAL			\$14,200

HDR's approach, assumptions, and costs to perform the proposed tasks are presented below. HDR's Terms and Conditions are presented in Attachment A.

Total cost for project management, SPCC Plan update, and development of a SPCC training module is **\$14,200**. Total cost for support without the SPCC training option is **\$11,125**; this proposal is valid for 180 days from receipt.

Should you have any questions or if we can be of further assistance, please do not hesitate to contact Ms. Tina Gurdikian at 303.809.4669 or Tina.Gurdikian@hdrinc.com.

Sincerely,

HDR Environmental, Operations and Construction, Inc.

Bryce Langley, CHMM, REM
Senior Vice President, Managing Principal

cc: Mike Walters – HDR
Peter Hargis – HDR
Tina Gurdikian - HDR
Steve Madison – HDR

Technical Approach

1. Project Management

HDR will provide all necessary project management activities under this task.

2. Spill Prevention, Control, and Countermeasure (SPCC) Plan Update

Upon notice to proceed, HDR will schedule a 1-day site visit to the City of Montclair Police Department to gather information necessary to develop a SPCC Plan for the station. Using information gathered during the site visit, HDR will develop a Draft SPCC Plan that will be fully compliant with 40 Code of Federal Regulations (CFR) 112, as amended, and the California Aboveground Petroleum Storage Act (APSA).

The Draft SPCC Plan will be submitted via email for review and comment within 30 days of completion of the site visit. HDR will revise the Draft SPCC Plan and prepare a Final SPCC Plan within 15 business days of receiving comments on the Draft. The Final SPCC Plan will be delivered both electronically in Microsoft Word and Adobe Acrobat formats, and as well as one bound hard copy.

3. SPCC Training Module (optional)

HDR will develop a PowerPoint Training module to adequately communicate SPCC training requirements to oil-handling personnel. The training will, at a minimum, include training in the operation and maintenance of equipment to discharges, general facility operations, and the contents of the SPCC Plan.

The Draft SPCC PowerPoint Training will be submitted via email for review and comment 30 days after the SPCC Plan is finalized. HDR will revise the Draft SPCC PowerPoint Training and prepare a Final module within 15 business days of receiving comments. The Final SPCC training module will be delivered via email in Microsoft PowerPoint and Adobe Acrobat formats; hard copies will not be provided.

Assumptions

The following assumptions for the proposed cost estimates are:

1. The City of Montclair will provide an escort for HDR personnel during site visit.
2. The City of Montclair will ensure access to applicable personnel for questions related to SPCC tasks.
3. The City of Montclair will be responsible for conducting necessary SPCC training using the HDR-supplied SPCC training module.

HDR Environmental, Operations, and Constructions, Inc.

Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by CONSULTANT and its employees under this Agreement will be the care and skill ordinarily used by members of CONSULTANT's profession practicing under the same or similar circumstances at the same time and in the same locality. CONSULTANT makes no other warranties, express or implied, under this Agreement or otherwise, in connection with CONSULTANT's services.

2. INSURANCE/INDEMNITY

CONSULTANT agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which CONSULTANT is legally liable. If flying an Unmanned Aerial System (UAS or drone), CONSULTANT will procure and maintain aircraft unmanned aerial systems insurance of \$1,000,000 per occurrence. OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. CONSULTANT agrees to indemnify OWNER for third party personal injury and property damage claims to the extent caused by CONSULTANT's negligent acts, errors or omissions. However, neither Party to this Agreement shall be liable to the other Party for any special, incidental, indirect, or consequential damages (including but not limited to loss of use or opportunity; loss of good will; cost of substitute facilities, goods, or services; cost of capital; and/or fines or penalties), loss of profits or revenue arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, errors or omissions, strict liability or breach of contract.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by CONSULTANT are made on the basis of information available to CONSULTANT and on the basis of CONSULTANT's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since CONSULTANT has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, CONSULTANT does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost CONSULTANT prepares.

4. CONSTRUCTION PROCEDURES

CONSULTANT's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. CONSULTANT shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. CONSULTANT shall not be responsible for the acts or omissions of the contractor or other parties on the project. CONSULTANT shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of CONSULTANT beyond those set forth in this Agreement. OWNER agrees to include CONSULTANT as an indemnified party in OWNER's construction contracts for the work, which shall protect CONSULTANT to the same degree as OWNER. Further, OWNER agrees that CONSULTANT shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where CONSULTANT's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard Specifications, or Standard Bidding Documents which are to be incorporated into the project.

In performing professional engineering and related services hereunder, it is understood by OWNER that CONSULTANT is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by CONSULTANT, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by CONSULTANT.

7. SUCCESSORS, ASSIGNS AND BENEFICIARIES

OWNER and CONSULTANT, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor CONSULTANT will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other. No third party beneficiaries are intended under this Agreement.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by CONSULTANT pursuant to this Agreement, are instruments of service with respect to the project. CONSULTANT retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by CONSULTANT for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to CONSULTANT, and OWNER will defend, indemnify and hold harmless CONSULTANT from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle CONSULTANT to further compensation at rates to be agreed upon by OWNER and CONSULTANT.

9. TERMINATION OF AGREEMENT

OWNER may terminate this Agreement, in whole or in part, by giving seven (7) days written notice to CONSULTANT, provided that OWNER will not terminate for cause without providing CONSULTANT written notice of the breach and a period of ten (10) days to cure. CONSULTANT may terminate for cause only, by giving seven (7) days written notice to OWNER, and only after providing OWNER written notice of the breach and a period of ten (10) days to cure. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs CONSULTANT incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

11. INVOICES

CONSULTANT will submit monthly invoices for services rendered and OWNER will make payments to CONSULTANT within thirty (30) days of OWNER's receipt of CONSULTANT's invoice.

(2/2021)

CONSULTANT will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in CONSULTANT's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify CONSULTANT of the dispute and request clarification and/or correction. After any dispute has been settled, CONSULTANT will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for CONSULTANT. CONSULTANT retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date OWNER receives CONSULTANT's invoice. In the event undisputed portions of CONSULTANT's invoices are not paid when due, CONSULTANT also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement. The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by CONSULTANT are estimates to perform the services required to complete the project as CONSULTANT understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. CONSULTANT will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, CONSULTANT agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity for individuals based on color, religion, sex, or national origin, or disabled veteran, recently separated veteran, other protected veteran and armed forces service medal veteran status, disabilities under provisions of executive order 11246, and other employment, statutes and regulations, as stated in Title 41 Part 60 of the Code of Federal Regulations § 60-1.4 (a-f), § 60-300.5 (a-e), § 60-741 (a-e).

15. HAZARDOUS MATERIALS

OWNER acknowledges that CONSULTANT is performing professional services for OWNER and that CONSULTANT is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with CONSULTANT's services under this Agreement. If CONSULTANT's services hereunder cannot be performed because of the existence of hazardous materials, CONSULTANT shall be entitled to terminate this Agreement for cause on 30 days written notice.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between CONSULTANT and OWNER, supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. ALLOCATION OF RISK

OWNER AND CONSULTANT HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING CONSULTANT'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREED TO ALLOCATE CERTAIN OF THE RISKS, SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF CONSULTANT (AND ITS RELATED CORPORATIONS, SUBCONSULTANTS AND EMPLOYEES) TO OWNER AND THIRD PARTIES GRANTED RELIANCE IS LIMITED TO THE GREATER OF \$1,000,000 OR ITS FEE, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF CONSULTANT'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY, INCLUDING NEGLIGENCE, INDEMNITY, OR OTHER RECOVERY.

18. LITIGATION SUPPORT

In the event CONSULTANT is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which CONSULTANT is not a party, OWNER shall reimburse CONSULTANT for reasonable costs in responding and compensate CONSULTANT at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. NO THIRD PARTY BENEFICIARIES

No third party beneficiaries are intended under this Agreement. In the event a reliance letter or certification is required under the scope of services, the parties agree to use a form that is mutually acceptable to both parties.

20. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify CONSULTANT of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. CONSULTANT shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against CONSULTANT and will indemnify and hold CONSULTANT harmless from any claim of liability, injury or loss caused by or allegedly caused by CONSULTANT's damaging of underground utilities that are not properly marked or are not called to CONSULTANT's attention prior to beginning the underground sampling/testing.

21. UNMANNED AERIAL SYSTEMS

If operating UAS, CONSULTANT will obtain all permits or exemptions required by law to operate any UAS included in the services. CONSULTANT's operators have completed the training, certifications and licensure as required by the applicable jurisdiction in which the UAS will be operated. OWNER will obtain any necessary permissions for CONSULTANT to operate over private property, and assist, as necessary, with all other necessary permissions for operations.



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	FRD250/FRD220
SECTION:	CONSENT - AGREEMENTS	DEPT.:	FIRE
ITEM NO.:	12	PREPARER:	D. POHL
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 21-88 WITH SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, A MEMORANDUM OF UNDERSTANDING FOR PARTICIPATION IN A 2021 REGIONAL ASSISTANCE TO FIREFIGHTERS GRANT OPPORTUNITY		
	CONSIDER AUTHORIZING CITY MANAGER EDWARD C. STARR TO SIGN AGREEMENT NO. 21-88		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-88, a Memorandum of Understanding (MOU) between San Bernardino County Fire Protection District and participating regional fire partners (to include Montclair Fire Department). The MOU outlines terms and conditions for all participating regional fire partners to take place in a grant opportunity to acquire new Motorola APX 8000 all-band radios for the Fire Department.

A copy of proposed Agreement No. 21-88 is attached for the City Council's review and consideration.

BACKGROUND: The Montclair Fire Department currently utilizes 800 MHz hand-held radios to communicate with both its Consolidated Fire Agencies (CONFIRE) dispatch provider as well as neighboring assisting agencies during emergency response operations. The current radios in operation were last purchased through a similar regional grant opportunity with San Bernardino County Fire Protection District and only feature 800 MHz band transmit and receive capability. These radios are currently functional amongst all contracted CONFIRE agencies; however, they lack the ability to communicate with other assisting agencies that utilize VHF and UHF radio bands. The primary agency utilizing VHF and UHF radio bands is Los Angeles County Fire Department (LACoFD). During the majority of structure fires within the Montclair City limits, LACoFD provides assistance. Without the interoperability, Montclair Fire is forced to utilize LACoFD in a minimal capacity and not place its firefighters in direct fire operations due to the risk of safety. Furthermore, due to automatic aid contracts, Montclair Firefighters are also limited in their capacity to assist LACoFD in county jurisdiction with firefighting operations due to incompatibility with radio technology.

The regional Assistance to Firefighters Grant (AFG) would allow the Montclair Fire Department to acquire new Motorola APX 8000 all-band radios, which provide not only 800 MHz functionality, but also operate with VHF and UHF capability. This would bridge the gap in communications with all responding agencies and provide adequate communications to ensure the safety of all firefighters.

In accordance with the terms outlined in the proposed MOU, the San Bernardino County Fire Protection District and the AFG require participating agencies to pay a 15 percent cost-share of the total grant award. In the current proposed grant application, Montclair Fire Department would receive a total of 9 Motorola APX 8000 radios, which are estimated to cost \$9,815.51 each. This brings the total potential award of the grant to

\$88,339.59. According to the proposed MOU, the City would be responsible for paying an estimated cost-share of \$11,522.56 in order to receive the radios.

FISCAL IMPACT: There would be no fiscal impact to enter into Agreement No. 21-88. Should the regional AFG be awarded and accepted by the City Council, the City would be responsible for contributing \$11,522.56 toward the purchase of new Motorola APX 8000 radios. Approval for this funding would be requested at a later date in a subsequent agenda report.

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

1. Approve Agreement No. 21-88 with San Bernardino County Fire Protection District, a Memorandum of Understanding for participation in a 2021 regional Assistance to Firefighters Grant opportunity.
2. Authorize City Manager Edward C. Starr to sign Agreement No. 21-88.

MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, APPLE VALLEY FIRE PROTECTION DISTRICT, CITY OF HIGHLAND FIRE DEPARTMENT, CITY OF YUCAIPA FIRE DEPARTMENT, CHINO VALLEY INDEPENDENT FIRE DISTRICT, CITY OF COLTON FIRE DEPARTMENT, CITY OF LOMA LINDA FIRE DEPARTMENT, CITY OF MONTCLAIR FIRE DEPARTMENT, RANCHO CUCAMONGA FIRE PROTECTION DISTRICT, CITY OF REDLANDS FIRE DEPARTMENT, CITY OF RIALTO FIRE DEPARTMENT, RUNNING SPRINGS FIRE DEPARTMENT AND CITY OF VICTORVILLE FIRE DEPARTMENT

I. Purpose

To establish a cooperative agreement between the Regional Partners, as defined below, in order to participate in a regional grant application and, if awarded grant funds, comply with all requirements of the United States Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) FY 2021 Assistance to Firefighters Grant (AFG), Operations and Safety component for Communications Equipment, associated with the acquisition of 800 MHz Portable radios.

The Regional Partners (sometimes individually referred to as Regional Partner, Party, or Agency, or collectively referred to as Parties) are:

- A. San Bernardino County Fire Protection District (SBCFPD),
- B. Apple Valley Fire Protection District (hereinafter AVFD),
- C. City of Highland through its Fire Department (hereinafter HFD),
- D. City of Yucaipa through its Fire Department (hereinafter YFD),
- E. Chino Valley Independent Fire District (hereinafter CVFD),
- F. City of Colton through its Fire Department (hereinafter CFD),
- G. City of Loma Linda through its Fire Department (hereinafter LLFD),
- H. City of Montclair through its Fire Department (hereinafter LLFD),
- I. Rancho Cucamonga Fire Protection District (hereinafter RCFD),
- J. City of Redlands through its Fire Department (hereinafter REDFD),
- K. City of Rialto through its Fire Department (hereinafter RFD),
- L. Running Springs Fire Department (hereinafter RSFD) and
- M. City of Victorville Fire Department (hereinafter VVFD).

Regional Partners accept and agree to abide by all terms and conditions of the grant, including those in the DHS Notice of Funding Opportunity Fiscal Year 2021 AFG Program (number EMW- 021-FG-01733) and any subsequent grant award agreement entered into between SBCFPD and FEMA. The Notice of Funding Opportunity and subsequent grant award agreement are incorporated into the body of this MOU by reference. All parties agree that Federal funds under this award will be used to supplement, but not supplant, State or local funds for first responder preparedness.

II. Definitions

Regional Partners, Regional Partner, Parties or Party, and Agency – see definition in Section I. Purpose.

“800 MHz Portable Radio” or “Equipment” – refers to handheld radios and all associated equipment including antennae, battery and all internal hardware and software. The equipment will be upgraded to included rugged radio enhancement (to withstand conditions in the field), Astro Digital CI operation, Smart Zone operation, P25 9600 Baud trunking, front panel programming and cloning, AES encryption, multikey enhancement, WiFi capability, Programming over P25 (OTAP), 3-year service contract. The radio and equipment purchased through this grant will meet or exceed national and state standards. Any specific brand or trade name referenced in this MOU includes

“or equals”.

Host Applicant/Agency – refers to an individual fire department/fire protection district who applies for a regional project on behalf of itself and any number of neighboring fire departments.

Grant - FY 2021 Assistance to Firefighters Grant.

III. **Background to the AFG Grant Project**

Problem Statement: Many of the fire departments within the region lack adequate radio equipment in their inventory that are less than ten old years old and the financial resources to replace them.

Purpose: The purpose of the AFG Program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. Regional program activities should achieve cost effectiveness, and support regional efficiency and resilience. The AFG Regional Project reflects the DHS overall investment strategy priorities.

- A. Enhancing National Capabilities** - grant funding will assist in moving the Regional Partners closer to meeting one of the national priorities under the National Preparedness Goal by strengthening a unified and coordinated operational structure and process that appropriately integrates all critical stakeholders and supports the execution of core capabilities.
- B. Interoperability**- grant funding will assist the Regional Partners with replacing obsolete portable radios and equipment with cost-effective, sustainable and interoperable radios. SBCFPD and its Regional Partners will build and/or leverage on existing resources to strategically invest in enhancing regional communication capabilities.
- C. National Fire Protection Agency Standards** – grant funding will assist the Regional Partners in meeting all current NFPA standards.

IV. **Responsibilities of SBCFPD**

As the Host Applicant/Agency for the Regional FY2021 AFG, and, if the grant application is successful, SBCFPD will:

- A.** Provide funding for 15% (for its share) of the matching cost for Equipment to be purchased.
- B.** Oversee the grant implementation and coordinate with FEMA.
- C.** Act as the fiscal agent for the grant including:
 - 1.** Invoice Regional Partners for cost share of the Equipment,
 - 2.** Arrange payment to vendor,
 - 3.** Prepare and submit fiscal and program reports for FEMA, and
 - 4.** Audit and track grant funds and deliverables.
- D.** Manage grant activities including, but not limited to, project and fiscal reports for FEMA.
- E.** Coordinate with the Regional Partners throughout the grant term.
- F.** After receiving input from Regional Partners, make the final determination of the Equipment to be ordered for the Regional Partners.
- G.** Coordinate procurement of the Equipment and make final procurement decisions.
- H.** Procure the Equipment in compliance with SBCFPD and Federal procurement policies and requirements.
- I.** Deliver the Equipment to participating Regional Partners.
- J.** Maintain documentation of any changes to the award and/or distribution, compared to the original application.
- K.** Ensure invoice, payment and compliance of all Regional Partners included in the grant.
- L.** Ensure that all activities comply with the terms of the Notice of Funding Opportunity, grant award agreement, federal regulations (including, but not limited to, 2 C.F.R. Part 200), laws,

and Executive Orders as applicable.

- M. Costs that may be reimbursed under this MOU do not include Research and Development as defined in 2 CFR 200.87, nor do they include indirect costs.

V. Responsibilities of All Regional Partners

Each Regional Partner will:

- A. Provide funding for 15% (for its share) of the matching cost for Equipment to be purchased. Share of cost shall be paid upon receipt of invoice from SBCFPD, in advance of Equipment procurement.
- B. Provide the following assigned liaison(s):
 - 1. Project Lead: primary point of contact, responsible for the Equipment.
 - 2. Fiscal Lead: contact responsible for accounting, fiscal reporting and payments.
- C. Promptly provide any additional documentation to SBCFPD as requested that may be necessary in connection with the grant.
- D. Ensure that all documents demonstrating programmatic completion are completed in a timely manner, are accurate, and forwarded to SBCFPD contact.
- E. Maintain all Equipment and grant records, files, and supporting documentation in the event of an audit by SBCFPD, the State or the United States Government for at least three years or longer (as provided in the Notice of Funding Opportunity) after the official grant closeout. This paragraph shall survive termination of the MOU.
- F. Ensure that all activities comply with the terms of the host/lead agency, Notice of Funding Opportunity, grant award (including, but not limited to, 2 C.F.R. Part 200), federal regulations, laws, and Executive Orders as applicable.
- G. **Each Regional Partner hereby waives and releases SBCFPD and its officers, employees, agents, and volunteers, from all known and unknown claims, liabilities, damages, causes of action, with respect to any Equipment procured under this MOU. The Regional Partners hereby acknowledge and expressly waive the protections of California Civil Code section 1542 which states:**

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

This paragraph shall survive termination of the MOU.

VI. Duration of the MOU

- A. This MOU shall take effect on the date it is signed and approved by authorized representatives of all parties to the MOU.
- B. Except as otherwise provided in this MOU, this MOU shall terminate: 1) on the date FEMA notifies SBCFPD that Regional Partners were not awarded a FY 2021 AFG grant for the purposes described in this MOU; or 2) if awarded a FY 2021 AFG grant, when all AFG Program obligations requiring action by SBCFPD have been completed upon closeout of the AFG Program grant.
- C. A Regional Partner may terminate its participation in the MOU at any time prior to SBCFPD ordering the Equipment by providing SBCFPD's Project Lead written notification. Termination by an individual Regional Partner shall not terminate this MOU between the non-terminating Parties.
- D. This MOU may also be terminated immediately in whole or in part by SBCFPD in the event of a breach of the Agreement terms by any Regional Partner. In such event, SBCFPD shall be

entitled to pursue any available remedies authorized by law or regulations.

VII. Budget and Equipment Allocation

The preliminary budget for Equipment is based upon vendor quotation at time of the grant application and formal bids will be obtained if/when the grant is awarded.

This MOU may be modified if FEMA modifies the scope of work and/or makes adjustments to the amount awarded. If this project is partially, but not fully, funded through the AFG, the funding will be distributed proportionally, unless otherwise agreed up by the Regional Partners in the form of an amendment to this MOU. Equipment allocation is shown in Exhibit A, attached hereto and incorporated into this MOU by this reference.

VIII. Authority to Enter into MOU

The persons executing this MOU on behalf of their respective entities hereby represent and warrant that they have the right, power, legal capacity, and appropriate authority to enter into this MOU on behalf of the entity for which they sign.

IX. Amendments

The parties agree any alterations, variations, modifications, or waivers of the provisions of the MOU, shall be valid only when reduced to writing, executed and attached to the original MOU and approved by the person(s) authorized to do so on behalf of the parties.

X. Points of Contact

A list identifying each Agency's Point of Contact shall be provided to and maintained by SBCFPD. The signature page of this MOU indicates the initial point of contact for each Regional Partner.

The primary points of contact for SBCFPD are:

Dan Munsey Fire Chief/Fire Warden 157 W. 5 th Street, Second Floor San Bernardino, CA 92415 909-387-5779 dmunsey@sbcfire.org	Dianne Mendez-Cantu Staff Analyst II 157 W. 5 th Street, Second Floor San Bernardino, CA 92415 909-387-9620 dmendez-cantu@sbcfire.org
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XI. No Joint Venture

This MOU shall not create between the Parties a joint venture, partnership, or any other relationship of association. In the performance of this MOU, SBCFPD, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the Regional Partners.

XII. No Grant of Agency

Except as provided in this MOU, no party to this MOU shall have authority, expressed or implied, to act on behalf of or legally bind another party to this MOU.

XIII. Indemnity and Insurance

SBCFPD agrees to indemnify, defend (with counsel reasonably approved by the applicable Regional Partner) and hold harmless each Regional Partner and their officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from SBCFPD's negligent acts or omissions which arise from SBCFPD's performance of its obligations under this MOU.

Each Regional Partner agrees to indemnify, defend (with counsel reasonably approved by SBCFPD), and hold harmless SBCFPD and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from each Regional Partner's negligent acts or omissions which arise from each Regional Partner's performance of its obligations under this Agreement.

In the event SBCFPD and/or any Regional Partner is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, SBCFPD and/or Regional Partner shall indemnify the other to the extent of its comparative fault.

Each Regional Partner warrants that through their respective programs of self-insurance and/or insurance, they each have adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this MOU.

Each Regional Partner agrees to waive all rights of subrogation against the other Regional Partners.

The indemnity and insurance provisions of this MOU shall survive the termination of this MOU.

XIV. Debarment

Each party to this MOU certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Any contracts funded by this MOU shall be with vendors that meet this certification.

XV. Additional Terms and Conditions

- A. This MOU shall be governed by the laws of the State of California. Any action or proceeding between the Regional Partners concerning the interpretation or enforcement of this MOU, or which arises out of or is in any way connected with this MOU, shall be instituted and tried in the appropriate state court in the County of San Bernardino, California.
- B. During the term of this MOU, the Regional Partners shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Regional Partners shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.
- C. If any word, phrase, clause, sentence, paragraph, section, article, part or portion of this MOU is or shall be invalid for any reason, the same shall be deemed severable from the remainder hereof and shall in no way affect or impair the validity of this MOU or any other portion thereof.
- D. Time is of the essence for each and every provision of this MOU.

- E.** Since the parties or their agents have participated fully in the preparation of this MOU, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for or against any party.
- F.** No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.
- G.** Nothing contained in this MOU shall be construed as a relinquishment of any rights now held by the SBCFPD.
- H.** The parties' actions under this MOU shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of this MOU is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.
- I.** This MOU is not assignable by any party, whether in whole or in part, without the consent of the other parties.
- J.** If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Section XIII.
- K.** In the event of a problem or potential problem that could impact the quality or quantity of work, services, or the level of performance under this MOU, the party with the problem or potential problem shall notify the other party within one (1) working day, in writing and by telephone.
- L.** The parties shall make all reasonable efforts to ensure that none of their officers or employees, whose positions in their entities enable them to influence any award of this MOU or any competing offer, shall have any direct or indirect financial interest resulting from the award of this MOU or shall have any relationship to the other parties or officer or employee of the other parties.
- M.** The parties shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the other party in an attempt to secure favorable treatment regarding this MOU. The parties, by written notice, may immediately terminate this MOU if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the other party with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. The parties shall immediately report any attempt by an officer, employee or agent of the other party to solicit (either directly or through an intermediary) improper consideration from the party. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the parties are entitled to pursue any available legal remedies.
- N.** No news releases, advertisements, public announcements or photographs arising out of this MOU or the parties' relationship with each other may be made or used without prior written approval of SBCFPD.
- O.** This MOU and any other documents incorporated herein, represents the final, complete and

exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this MOU not expressly set forth herein are of no force or effect. This MOU is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this MOU and signs the same of its own free will.

- P. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

IN WITNESS WHEREOF, the parties have each caused this MOU to be subscribed by their respective duly authorized officers, on its behalf.

San Bernardino County Fire Protection District
EIN #95-6002748

Apple Valley Fire Protection District
EIN # 33-0302585

Signature Date
Curt Hagman, Chairman

Signature Date
James Peratt, Interim Fire Chief

Chino Valley Independent Fire District
EIN #33-0469716

City of Colton Fire Department
EIN # 95-6000694

Signature Date
David Williams, Fire Chief

Signature Date
Tim McHargue, Fire Chief

City of Highland Fire Department
EIN #33-0270638

City of Yucaipa Fire Department
EIN # 33-0383371

Signature Date
Shane Littlefield, Fire Chief

Signature Date
Grant Malinowski, Fire Chief

City of Loma Linda Fire Department
EIN #95-2662323

Rancho Cucamonga Fire Protection District
EIN # 93-1004532

Signature Date
Dan Harker, Fire Chief

Signature Date
Ivan Rojer, Fire Chief

City of Montclair Fire Department
EIN #95-6005731

Signature _____ Date _____
David Pohl, Deputy Fire Chief

City of Rialto Fire Department
EIN # 95-6000768

Signature _____ Date _____
Brian Park, Interim Fire Chief

City of Redlands Fire Department
EIN #95-6000766

Signature _____ Date _____
Jim Topoleski, Fire Chief

Running Springs Fire Department
EIN #95-6006680

Signature _____ Date _____
Tony Grabow,
Interim Fire Chief

City of Victorville Fire Department
EIN # 95-2235918

Signature _____ Date _____
Jeff Armstrong, Fire Chief

MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT, APPLE VALLEY FIRE PROTECTION DISTRICT, CITY OF HIGHLAND FIRE DEPARTMENT, CITY OF YUCAIPA FIRE DEPARTMENT, CHINO VALLEY INDEPENDENT FIRE DISTRICT, CITY OF COLTON FIRE DEPARTMENT, CITY OF LOMA LINDA FIRE DEPARTMENT, CITY OF MONTCLAIR FIRE DEPARTMENT, RANCHO CUCAMONGA FIRE PROTECTION DISTRICT, CITY OF REDLANDS FIRE DEPARTMENT, CITY OF RIALTO FIRE DEPARTMENT, RUNNING SPRINGS FIRE DEPARTMENT AND CITY OF VICTORVILLE FIRE DEPARTMENT

EXHIBIT A

Fire Jurisdictions	Population (POP)	Percentage based on POP	Amount Distributed	Number of Radios Per Population	Adjusted Radios	Total Match Amount 15%
Apple Valley Fire Protection District	74,394	3.82%	140,852.01	14.3	16	\$20,484.54
City of Highland Fire Department	55,323	2.84%	104,744.41	10.7	12	\$15,363.41
City of Yucaipa Fire Department	55,712	2.86%	105,480.92	10.7	12	\$15,363.41
Chino Valley Independent Fire District	174,193	8.94%	329,803.95	33.6	14	\$17,923.97
City of Colton Fire Department	54,118	2.78%	102,462.96	10.4	12	\$15,363.40
City of Loma Linda Fire Department	24,535	1.26%	46,452.73	4.7	6	\$7,681.70
City of Montclair Fire Department	39,490	2.03%	74,767.40	7.6	9	\$11,522.56
Rancho Cucamonga Fire Protection District	175,522	9.00%	332,320.18	33.9	35	\$44,809.95
City of Redlands Fire Department	70,952	3.64%	134,335.19	13.7	15	\$19,204.26
City of Rialto Fire Department	104,553	5.36%	197,952.80	20.2	22	\$28,166.25
Running Springs Fire Department	4,862	0.25%	9,205.35	0.9	5	\$6,401.42
San Bernardino County Fire Protection District	989,200	50.73%	1,872,877.01	190.8	192	\$245,814.52
City of Victorville Fire Department	126,432	6.49%	239,376.86	24.4	26	\$33,287.36
Total	1,949,286	100.00%	3,690,631.76	376.0	376	\$481,386.75



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	PDT175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	13	PREPARER:	R. AVELS

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 21-90 WITH SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT, A MEMORANDUM OF AGREEMENT TO CONDUCT INVESTIGATIONS OF OFFICER-INVOLVED SHOOTINGS AND IN-CUSTODY DEATHS

CONSIDER AUTHORIZING EXECUTIVE DIRECTOR OF PUBLIC SAFETY/POLICE CHIEF ROBERT AVELS TO SIGN AGREEMENT NO. 21-90

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 21-90, a Memorandum of Agreement between San Bernardino County Sheriff's Department (SBSD) and Montclair Police Department (MPD) to conduct investigations of officer-involved shootings and in-custody deaths.

BACKGROUND: For many years, the Police Department has utilized the services of SBSB to conduct the investigations of officer involved shootings (OIS) and in-custody deaths (ICD), which involve officers of MPD within its jurisdiction. The purpose behind the decision of using SBSB to conduct the criminal aspect of the investigation is to ensure that such incidents be investigated in a fair and impartial manner. Simultaneously, a member of Command Staff from MPD will conduct an independent administrative investigation to ensure the actions of the officers involved were within Department Policy. Generally, the Department will conduct the criminal aspect of these types of investigations within its jurisdiction if the incident only involves an officer from another jurisdiction.

While the Police Department has an internally established policy regarding the protocols and responsibilities of these types of incidents, it was determined there is a need to develop a formal Memorandum of Agreement (MOA) with the Sheriff's Department to establish guidelines for the criminal aspect of the investigation. Moreover, Senate Bill 1421 and Assembly Bill 1506 were key legislative changes requiring the need for an MOA between SBSB and the Montclair Police Department. SB 1421 became effective January 1, 2019, and amended Penal Code 832.7 to exclude certain files from confidentiality and therefore subject to routine discovery under the provisions of the Public Records Act (PRA), Government Code §6250, *et seq.* SB 1421 requires the release of certain information requested under the PRA, which involves any officer's discharge of a firearm at a person, as well as a use of force incident by any officer resulting in death or great bodily injury. AB 1506 became effective July 1, 2021, amending Government Code § 12525.3, which requires the California Department of Justice to investigate incidents of an OIS that results in the death of an unarmed civilian. The proposed MOA between the SBCSD and MPD would formally establish the responsibilities for responding to applicable PRA requests and any required notification to the California Department of Justice of an incident meeting the definition of Government Code § 12525.3.

FISCAL IMPACT: If authorized by the City Council, proposed Agreement No. 21-90 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. 21-90 with San Bernardino County Sheriff's Department,, a Memorandum of Agreement to conduct investigations of officer involved shootings and in-custody deaths.
2. Authorize Executive Director of Public Safety/Police Chief Robert Avels to sign Agreement No. 21-90.



SHANNON D. DICUS, SHERIFF-CORONER

Agreement No. 21-90

Memorandum of Agreement
Between
San Bernardino County Sheriff's Department And
Montclair Police Department

APPLICATION:

This Memorandum of Agreement (MOA) memorializes the agreement between the San Bernardino County Sheriff's Department (Sheriff or Department) and the Montclair Police Department (Employing Agency) regarding Officer Involved Shootings (OIS) and state reportable In Custody Death (ICD) investigations. Nothing in this MOA should be construed as limiting or impeding the basic spirit of cooperation which exists between the two agencies listed.

PURPOSE:

This MOA establishes investigation guidelines for when Employing Agency is involved in an on-duty or off-duty OIS or is involved in an ICD that occurs within the unincorporated area of San Bernardino County, within a city in which the Sheriff has contracted to provide law enforcement services, or within a city which has entered into an MOA with the Sheriff's Department for the Sheriff's Department to conduct OIS and ICD investigations within the city. As a public service, the Sheriff's Specialized Investigations Division, Homicide Detail will conduct the OIS and ICD investigations without charge. At the conclusion of an investigation, the Homicide Detail will submit the completed report to the San Bernardino County District Attorney's Office for review.

NOTIFICATION PROCEDURES:

When one or more of Employing Agency's peace officers is involved in an OIS (whether on-duty or off-duty), or an ICD, Employing Agency's on-scene supervisor or manager shall evaluate the scope of the OIS or ICD. If the incident is determined to be an OIS or an ICD subject to this MOA, he/she will contact the Department's dispatch center. Personnel assigned to the dispatch center will provide contact information for the on-call Sheriff's Department Homicide Detail supervisor. It is imperative to the integrity of the investigation of the OIS or ICD and the well-being of the involved personnel that the Sheriff's Homicide Detail be notified as soon as possible so the investigation can be started with minimal delay.

MEMORANDUM OF AGREEMENT

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The Sheriff's Homicide Detail supervisor will discuss the circumstances of the OIS or ICD with the Employing Agency's on-scene supervisor or manager and determine what level of assistance is needed prior to the Homicide Detail's arrival. The Sheriff's Homicide Detail will normally not respond to a non-hit OIS incident or other lethal force encounter. Employing Agency agrees that a specific request can be made by its Executive Command Staff to the Office of the Sheriff if it wants the Sheriff's Homicide Detail to investigate a non-hit shooting incident or other lethal force encounter.

The Homicide Detail will notify the California Department of Justice and/or the Attorney General's Office if the Homicide Detail determines that an incident meets the definition of Government Code section 12525.3. The Homicide Detail will cooperate with the California Department of Justice and/or the Attorney General's Office if they elect to assume the investigation.

EXPECTATIONS:

Employing Agency's on-scene supervisor or manager will be responsible for stabilizing and securing the shooting or death scene. Absent an exigent legitimate law enforcement purpose, Employing Agency's personnel will not enter the shooting or death scene until the arrival and approval of the Sheriff's Homicide Detail supervisor. Members of Employing Agency will make every effort to protect the integrity of the incident scene. Upon arrival at the scene, the Sheriff's Homicide Detail members will contact Employing Agency's on-scene supervisor for a briefing of the OIS or ICD incident.

The Department and Employing Agency agree that Employing Agency's personnel involved in the OIS or ICD may be removed from the scene and transported to the nearest Employing Agency building to await the arrival of the Homicide Detail investigators. The involved officer(s) should be allowed to call family but should be instructed to refrain from talking about the incident with anyone except their legal counsel or labor representative and/or the Sheriff's Homicide investigators. The involved officer(s) should be made comfortable but should remain dressed in the same clothing and equipment as was worn during the OIS or ICD incident unless doing so could be detrimental to an officer's health or wellbeing. The involved officer(s) should retain their weapon until Sheriff's Homicide Detail investigators arrive. Employing Agency will be responsible for issuing the involved officer(s) another duty weapon until the Sheriff's Department Crime Lab has completed the weapon examination.

Employing Agency and the Department agree that members of the Sheriff's Homicide Detail will interview Employing Agency's involved and witnessing personnel and civilian witnesses deemed to be pertinent by investigators. If Employing Agency's personnel involved in the incident request to speak to, or have present, legal counsel or a labor representative during the interview, the Homicide Detail investigators will honor that request. Sheriff's Homicide Detail investigators will allow officer(s) involved in the OIS or ICD to listen to their belt recordings or watch body worn or in car video recordings of the incident prior to the interview. The Sheriff's Homicide Detail investigators will only interview an involved officer if the statement from the officer is voluntary.

When all the criminal investigation interviews have been completed, the Sheriff's Homicide Detail investigators will brief Employing Agency's Command Staff and/or managers so they can begin their Administrative Investigation per their department policy. Copies of the complete criminal

MEMORANDUM OF AGREEMENT

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investigation, and all photographs and audio recordings will be provided to the Employing Agency and the San Bernardino County District Attorney's Office for review upon completion of the investigation.

MEDIA INQUIRIES AND PUBLIC RECORDS ACT REQUESTS:

Employing Agency will be responsible for all information given to the media. Generally, the Department will not release any information about the incident to the media whether in writing or via interview, and all questions from the media will be referred to Employing Agency. However, after conferring with Employing Agency's on-scene supervisor, a sergeant from the Department's Homicide Detail may make a brief statement at the outset of an investigation summarizing the facts as they are known at the time and informing the media of the status of the investigation.

Employing Agency will be responsible for responding to any and all Public Records Act requests for records related to any OIS or ICD investigated by the San Bernardino County Sheriff's Department pursuant to this MOA. Any Public Records Act request received by the San Bernardino County Sheriff's Department will be immediately forwarded to the employing agency. The Employing Agency shall be responsible for completing any necessary redaction.

If a Department employee also discharged a firearm during an OIS, or used force during an ICD, the Department will be responsible for responding to any and all Public Records Act requests for records related to the OIS or ICD. If a member of an agency, other than the Department, also discharged a firearm during an OIS, or used force during an ICD, Employing Agency and any other involved agency, will coordinate the response to any and all Public Records Act requests for records related to the OIS or ICD.

In regard to those Public Records Act requests requiring a response from Employing Agency, Employing Agency agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of any response or failure to respond to a Public Records Act request seeking records related to an investigation of an OIS or ICD pursuant to this MOA. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. Employing Agency's indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

DURATION AND TERMINATION:

This MOA shall remain in effect until either party wishes to terminate the agreement. It will be the responsibility and obligation of both parties to ensure that this MOA is in compliance with all state laws as well as the respective agencies' policies and procedures.

MODIFICATIONS:

It is agreed that this MOA may be modified at any time by written consent by the involved parties. Modification to the MOA shall have no force or effect until such modifications are reduced to writing and signed by an authorized representative of each agency.

MEMORANDUM OF AGREEMENT

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In consideration of the other party agreeing to carry out the investigative tasks described above, on behalf of our representative law enforcement agency we each freely and voluntarily agree to all the above terms of this Memorandum of Agreement.

Date: _____

Date: _____

Shannon D. Dicus
Sheriff/Coroner
San Bernardino County Sheriff's Department

Robert Avels
Chief of Police
Montclair Police Department

Approved as to Legal Form:

Date: _____

Date: _____

Miles Kowalski
Deputy County Counsel
Office of County Counsel

Diane Robbins
City Attorney
City of Montclair



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	PER593
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	1	PREPARER:	J. HAMILTON
SUBJECT:	CONSIDER APPROVAL OF RESOLUTION NO. 21-3328 REAFFIRMING THE PAYMENT AND REPORTING THE VALUE OF EMPLOYER-PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AS OF JULY 15, 2002		

REASON FOR CONSIDERATION: The labor agreements with the City's non-safety, miscellaneous management, and executive management employees, as well as those employees entitled to benefits outlined in the agreement with the executive managers—such as the City Manager and City Council—provide that the City agreed to pay eight percent (8%) of those employees' normal contributions since July 15, 2002. Pursuant to California Government Code § 20691(a), in relevant part, "...a contracting agency... may pay all or a portion of the normal contributions required to be paid by a member [to CalPERS]," which is known as the Employer Paid Member Contribution ("EPMC"). However, the California Public Employees' Retirement System (CalPERS) requires the City Council to adopt a resolution reaffirming and approving the payment and reporting of the value of the EPMC to CalPERS.

The City Council is requested to consider adoption of Resolution No. 21-3328 reaffirming the payment and reporting of the value of the EPMC to CalPERS as of July 15, 2002. A copy of Resolution No. 21-3328 is attached for City Council review and consideration.

BACKGROUND: CalPERS is a defined benefit plan funded by employee contributions, employer contributions, and earnings made on CalPERS investments. Most employees contribute a percentage of their salary, which accrues interest under their individual CalPERS account. Each employee's retirement benefit is based on a retirement formula using the employee's total service credit, age at retirement, and highest average annual compensation during any consecutive 12- or 36-month period throughout their CalPERS career. The EPMC is an employment benefit provided by the City of Montclair in which the City agrees to pay some or all of the statutorily required employee contribution to the CalPERS system. It is an employment benefit as it increases the employee's average annual compensation rate during employment. Since July 15, 2002, the City of Montclair enhances the EPMC retirement benefit by reporting the value of the EPMC paid to CalPERS as additional compensation, which increases the base upon which retirement benefits are calculated. It can increase up to the maximum (7% to 9%, depending upon the applicable benefit formula), or be reduced to zero. It is treated like any other employment compensation benefit, such as salary, uniform allowance, vacation or the like. However, the mere act of providing EPMC does not make it a retirement benefit, and it is not vested absent language making it vested.

On January 1, 2013, the Public Employees' Pension Reform Act ("PEPRA") became effective and changed the pension formulas for any newly hired employee. For newly hired public safety employees, their retirement benefit decreased from 3% at 55 to 2.7% at 57, while newly-hired miscellaneous employees' retirement benefit decreased more substantially from the 3% at 60 provided for employees hired before July 1, 2010, and

2% at 60 for those hired after, to 2% at 62 under PEPRA. While PEPRA changed many of the rules regarding pension benefits for newly-hired employees, it did not change any of the rules regarding the EPMC for classic members (i.e., generally, those members already in the CalPERS retirement system prior to July 1, 2013). However, PEPRA employees must pay at least 50% of the actuarially-determined normal cost, which disallows the City from proving PEPRA managers and executive managers the EPMC benefit, and it is CalPERS, not the City, that determines the normal cost rate for each employee's specific retirement benefit.

In early 2021, CalPERS performed an audit of the City's EPMC program and, on April 23, 2021, indicated that, because CalPERS could not find the City's resolution on file demonstrating City Council approved an EPMC rate change from 7 percent to 8 percent in July 2002, alleged the City was in violation of the California Public Employees' Pension Law (PERL). However, CalPERS' own documents, actuarial reports, and EPMC rate on myCalPERS reflected the effective rate as 8 percent. CalPERS certainly did not arbitrarily make this change in 2002 without first acquiring the proper documentation from the City. In fact, on CalPERS' myCalPERS website, it demonstrated that CalPERS received the authorization regarding EPMC. However, when the City attempted to electronically retrieve this document from myCalPERS, it was not available.

The City requested from CalPERS a copy of the document identified on myCalPERS but CalPERS did not produce the document. The City made every effort to locate this document in existing City files; however, staff was not able to find it.

Additionally, if the increase from 7 percent to 8 percent was truly in error, CalPERS did not flag this as an issue to the City over the preceding two decades. In fact, had the City attempted to make EPMC contributions at 7 percent, CalPERS' system would have flagged this to the City as an incorrect amount. The City has reported the proper 8 percent EPMC as required by the City's labor agreements as adopted by City Council at the appropriate effective rate of 8 percent.

Because CalPERS cannot locate the documentation that prompted it to change the EPMC rate in its system from 7 percent to 8 percent over two decades ago, CalPERS' initial solution was to penalize the City and its retirees. However, the City appealed CalPERS' initial findings indicating that it would be unfair to penalize retirees by making corrections to their retirement allowance or to active/retired employees by making any adjustments contrary to the guarantees outlined in the respective labor agreements. In effect, employees and retirees of the City should not have to suffer any retirement benefit detriment due to CalPERS' administrative and/or clerical errors in its failure to retain records.

In response to the City's appeal, CalPERS is now requiring the City Council to adopt a resolution reaffirming and approving the payment and reporting the value of EPMC to CalPERS as it has done since July 12, 2002.

FISCAL IMPACT: The City Council's adoption of proposed Resolution No. 21-3328 would create no additional financial impact to the City's General Fund.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3328 reaffirming the payment and reporting the value of EPMC to CalPERS as of July 15, 2002.

RESOLUTION NO. 21-3328

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR REAFFIRMING THE PAYMENT AND REPORTING THE VALUE OF EMPLOYER-PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM AS OF JULY 15, 2002

WHEREAS, the City Council of the City of Montclair has the authority to implement California Government Code Section 20636(c)(4) pursuant to Section 20691; and

WHEREAS, the City Council of the City of Montclair has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation; and

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of Montclair of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC); and

WHEREAS, the City Council of the City of Montclair has identified the following conditions for the purpose of its election to pay EPMC;

- This benefit shall apply to all employees entitled to the benefits of the non-safety, miscellaneous Management and Executive Management groups, including the City Manager and eligible City Council Members.
- This benefit shall consist of paying eight percent (8%) of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable (excluding California Government Code Section 20636(c)(4)) as additional compensation.
- The effective date of this Resolution shall be July 15, 2002.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby elects to pay and report the value of EPMC, as set forth above.

APPROVED AND ADOPTED this XX day of XX, 2021 .

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3328 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



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	COV100/CYC125
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	2	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 21-3331 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 DECEMBER 20, 2021, THROUGH JANUARY 19, 2022		

REASON FOR CONSIDERATION: The City Council’s adoption of Resolution No. 21-3330 would extend the City’s remote public meeting procedures under AB 361 for an additional 30 days, expiring January 19, 2022.

BACKGROUND: Governor Newsom’s Executive Order N-29-20, which suspended and modified the Brown Act’s teleconferencing requirements during the COVID-19 pandemic, expired on September 30, 2021. On September 16, 2021, Governor Newsom signed AB 361 into law as an urgency bill and, four days later, executed an order delaying the application of AB 361 until October 2, 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 emergency declarations through January 1, 2024. However, to do so, the legislative body must make factual findings to continue teleconferencing every 30 days.

FISCAL IMPACT: There is no direct fiscal impact on the General Fund related to the City Council’s adoption of Resolution No. 21-3331.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3331 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 December 20, 2021, through January 19, 2021.

RESOLUTION NO. 21-3331

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR STATING COMPLIANCE WITH THE PROVISIONS OF ASSEMBLY BILL 316 INCLUDING COMPLIANCE WITH ABBREVIATED TELECONFERENCE REQUIREMENTS FOR OPEN MEETINGS, AND MAKING FACTUAL FINDINGS REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY FOR THE PERIOD OF DECEMBER 20, 2021, THROUGH JANUARY 19, 2022

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.

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 January 19, 2022, 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. 21-3331 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



CITY COUNCIL AGENDA REPORT

DATE:	DECEMBER 20, 2021	FILE I.D.:	TRN110A
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	PUBLIC WORKS
ITEM NO.:	3	PREPARER:	S. STANTON
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 21-3332 AUTHORIZING SUBMITTAL OF A CLAIM TO THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 FUNDS FOR THE PACIFIC ELECTRIC TRAIL BRIDGE REPLACEMENT PROJECT		

REASON FOR CONSIDERATION: The City Council is requested to consider adoption of Resolution No. 21-3332 authorizing staff to submit a reimbursement claim to the San Bernardino County Transportation Authority (SBCTA) for Transportation Development Act Article 3 funds. A local resolution is a requirement of the Transportation Development Act (TDA) of 1971.

BACKGROUND: On March 21, 2021, the Pacific Electric (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 recommended replacement. The replacement will be a prefabricated steel truss bridge to mitigate the risks that left the existing bridge vulnerable to fire. 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 a state-licensed structural engineer has preapproved its design. 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.

Following the closure of the bridge, SBCTA recognized the value and importance of replacing the PE trail bridge. SBCTA graciously offered to cover a percent of the cost, up to \$100,000, to replace the bridge through their TDA Grant Program. On June 2, 2021, the SBCTA Board of Directors authorized the release a Call for Projects under the TDA, Article 3 for bicycle and pedestrian improvement projects. The City prepared an application and applied for additional funding for the bridge replacement.

On November 3, 2021, SBCTA Board of Directors released a list of the approved projects and, the City was notified that an additional \$227,544 was approved towards replacement of the bridge. In total, SBCTA has now awarded a total of \$327,544 towards the replacement of the bridge.

As part of the TDA, Article 3 grant, the City is required to adopt a resolution authorizing the filing of the claim form, the submission of reimbursement Request Form(s), and designate the individuals authorized to certify project completion (Authorized Agent).

FISCAL IMPACT: Adoption of proposed Resolution No. 21-3332 would have no fiscal impact to the City.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 21-3332, authorizing submittal of a claim to SBCTA for TDA Article 3 funds for the Pacific Electric Trail Bridge Replacement Project.

RESOLUTION NO. 21-3332

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING SUBMITTAL OF A CLAIM TO THE SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY FOR TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 FUNDS FOR THE PACIFIC ELECTRIC BICYCLE TRAIL BRIDGE REPLACEMENT PROJECT

WHEREAS, the Mills-Alquist-Deddeh Act (SB 325) was enacted by the California Legislature to improve existing public transportation services and encourage regional transportation coordination. Known as the Transportation Development Act (TDA) of 1971, this law provides funding to be allocated to transit and non-transit related purposes that comply with regional transportation plans; and **WHEREAS**, TDA provides two funding sources, the Local Transportation Fund (LTF) and State Transit Assistance fund (STA); and

WHEREAS, LTF is derived from a ¼ cent of the general sales tax collected statewide and apportioned by population to areas within the county; and

WHEREAS, STA is derived from the statewide sales tax on diesel fuel, plus an additional vehicle registration fee authorized under Senate Bill 1, referred to as the State of Good Repair, and both are apportioned by the State Controller’s Office 50% by population and 50% by transit operator revenues; and

WHEREAS, the San Bernardino County Transportation Authority (SBCTA) authorizes funding for a wide variety of transportation programs in San Bernardino County, including planning and program activities, pedestrian and bicycle facilities, community transit services, public transportation, and bus and rail projects to local transportation agencies through annual apportionment and allocation processes, and approves payments periodically throughout the year; and

WHEREAS, SBCTA awarded the City of Montclair TDA Article 3 grant funds in the amount of \$327,544 for development of the Pacific Electric Bicycle Trail Bridge Replacement Project within the City of Montclair jurisdiction through a competitive “Call for Projects”; and

WHEREAS, TDA Article 3 grant funds are provided on a reimbursement basis; and

WHEREAS, SBCTA requires the City of Montclair to submit a claim and request(s) for reimbursement; and

WHEREAS, submittal of the claim for TDA Article 3 funds must be first authorized by the Montclair City Council; and

WHEREAS, the Pacific Electric Bicycle Trail Bridge Replacement Project award is over \$200,000, and is eligible for progress reimbursement, or under, and eligible for reimbursement at project completion; and

WHEREAS, SBCTA requires the designation of individuals authorized to certify Project completion; and

WHEREAS, the City Manager, or their designee, is authorized to certify project completion, and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair authorizes submittal of a claim and request for the reimbursement(s) for the TDA Article funds for the Pacific Electric Bicycle Trail Bridge Replacement Project in the amount of \$327,544 and that the City Manager is authorized to certify project completion.

APPROVED AND ADOPTED this XX day of XX, 2021.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 21-3332 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 MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
NOVEMBER 15, 2021, AT 6:35 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 6:35 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
November 1, 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 November 1, 2021.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

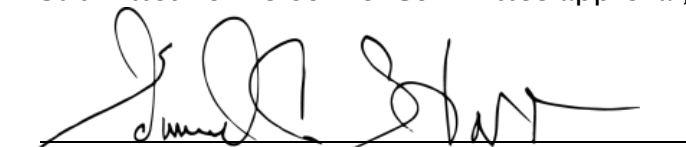
At 6:36 p.m., the Personnel Committee went into Closed Session
regarding personnel matters related to appointments, resignations/
terminations, and evaluations of employee performance.

At 6:52 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 6:52 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, NOVEMBER 15, 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 **Reverend Maggie Burbank-Yenoki, Montclair Unitarian Universalist Congregation.**

III. PLEDGE OF ALLEGIANCE

Council Member/Director Martinez led meeting participants in the Pledge.

IV. ROLL CALL

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

City Manager/Executive Director Starr; Director of Human Services Richter; Director of Economic Development Fuentes; Finance Manager Kulbeck; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

A. **Ms. Lauren Ensberg** provided updates on **Chaffey College** including the deadline for students to apply for the Montclair to College scholarship on March 1, 2022; the allocation of 2018 Measure P funding for master planning and facility improvements at **Chaffey's** three campuses; and **Chaffey College's** recognition by the **Hispanic Outlook on Education** as number four of the top California community colleges to grant Associates' degrees to Hispanic students.

B. **Ms. Eleni Christianson** raised issues she had accessing agendas on the City's website.

C. **Ms. Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, stated the District will be hosting its annual Christmas Open House event on Thursday, December 2nd from 5:30 to 7:30 p.m. at 14000 City Center Drive in Chino Hills. She advised RSVPs are required.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

Mayor Pro Tem Ruh and Council Member Lopez pulled Item C-2 from the Consent Calendar.

Council Member Johnson stated she would like to provide comments on Item C-4.

Council Member Lopez requested discussion on Items C-5 and C-8.

Moved by Mayor Pro Tem/Vice Chair Ruh, seconded by Council Member/Director Johnson, and carried unanimously 4-0-1 (Martinez left the meeting at 7:45 p.m. and was absent for the vote), the City Council approved the remainder of the Consent Calendar with discussion on Items C-4, C-5, and C-8 as follows:

A. Approval of Minutes

1. Regular Joint Meeting — November 1, 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 November 1, 2021 regular joint meeting.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending October 31, 2021.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated November 15, 2021, totaling \$62,057,905.42; and the Payroll Documentation dated October 10, 2021, amounting to \$715,422.92 gross, with \$495,269.68 net being the total cash disbursement; and October 24, 2021 amounting to \$658,389.52 gross, with \$438,479.67 net being the total cash disbursement.

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

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the Redevelopment Agency Treasurer's Report for the month ending October 31, 2021.

4. Approval of Successor Agency Warrant Register

The City Council acting as successor to the Redevelopment Agency Board approved the Successor to the Redevelopment Agency Warrant Register dated 10.01.21-10.31.21 in the amounts of \$11,540.13 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending October 31, 2021.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 10.01.21-10.31.21 in the amount of \$15,217.08.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending October 31, 2021.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 10.01.21-10.31.21 in the amount of \$0.00.

9. Receiving and Filing a Status Report on Emergency Contracting Procedures for the Pacific Electric Trail Bridge Replacement Project 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.

10. Approval of Tentative Parcel Map No. 20375 Generally Located on the East Side of Monte Vista Avenue South of Palo Verde Street

Authorizing Staff to Record Parcel Map No. 20375 with the Office of the San Bernardino County Recorder

The City Council took the following actions:

- (a) Approved Tentative Parcel Map No. 20375 generally located on the east side of Monte Vista Avenue south of Palo Verde Street.
- (b) Authorized staff to record Parcel Map No. 20375 with the Office of the San Bernardino County Recorder.

11. Authorizing the City to Opt-In to the National Opioid Settlements and Permitting the City Manager to Sign Formal and Binding Documents on Behalf of the City Related to Participation in the Settlements

The City Council authorized the City to opt-in to the National Opioid Settlements and permitting the City Manager to sign formal and binding documents on behalf of the City related to participation in the settlements.

C. Agreements

1. Approval of Amendment No. 1 to Agreement No. 21-27 with Catering Systems, Inc. to Provide Meals for the City's Senior Citizen Nutrition Program

The City Council approved Amendment No. 1 to *Agreement No. 21-27* with Catering Systems, Inc. to provide meals for the City's Senior Citizen Nutrition Program.

3. Approval of Agreement No. 21-72 Amending Agreement No. 13-41 with Mariposa Landscapes, Inc. for Landscape Maintenance Services

The City Council approved *Agreement No. 21-72* amending *Agreement No. 13-41* with Mariposa Landscapes, Inc. for landscape maintenance services.

4. Approval of Agreement No. 21-73 with Lexipol, LLC for Continued Maintenance of the Police Department Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB Management Services

Council Member Johnson asked how the Department would ensure the Daily Training Bulletins are completed by staff.

Executive Director of Public Safety/Police Chief Avels advised someone from each Department, Police and Fire, would be assigned to ensure the DTBs are being completed and signed off by staff on a monthly basis.

The City Council approved *Agreement No. 21-73* with Lexipol, LLC for continued maintenance of the Police Department Policy and Procedures Manual, Law Enforcement Daily Training Bulletins (DTB), and DTB management services.

5. Approval of Agreement No. 21-74 with Lexipol, LLC for Implementation and Management of the Fire Department Policy and Procedures Manual and Fire Service Daily Training Bulletins

Council Member Lopez stated his understanding several members of the Fire Department serve on a committee that reviews policies and procedures, and asked if recommendations from that committee have not been sought.

Executive Director of Public Safety/Police Chief Avels advised only one staff member was assigned the task to review the procedures and policy manual, and noted the committee of personnel may have been an informal meeting to provide input to that staff member. He further discussed the outdated state of the current manual, which was a product of the dissolved JPA

between the fire departments of Montclair and Upland that had not been updated since 2016.

The City Council approved *Agreement No. 21-74* with Lexipol, LLC for implementation and management of the Fire Department Policy and Procedures Manual and fire service Daily Training Bulletins.

6. Approval of *Agreement No. 21-75* with the San Bernardino County Office of Homeless Services for Access to the Homeless Management Information System

Authorizing the City Manager to Sign *Agreement No. 21-75*

The City Council took the following actions:

- (a) Approved *Agreement No. 21-75* with the San Bernardino County Office of Homeless Services for access to the Homeless Management Information System.
- (b) Authorized the City Manager to sign *Agreement No. 21-75*.

7. Approval of *Agreement No. 21-76* with Marlow Innovations Inc. dba AFR Engine for Facial Recognition Software Platform Access

Authorizing a \$5,000 Appropriation from the Prop 30/AB 109 Fund to Pay the Costs Associated with *Agreement No. 21-76*

The City Council took the following actions:

- (a) Approved *Agreement No. 21-76* with Marlow Innovations Inc. dba AFR Engine for facial recognition software platform access.
- (b) Authorized a \$5,000 appropriation from the Prop 30/AB 109 Fund to pay the costs associated with *Agreement No. 21-76*.

8. Approval of *Agreement No. 21-77* with Yao Engineering, Inc. for Electrical Engineering and Design Services for a New Main Switchboard and Standby Generator at the Civic Center

Authorizing the City Manager to Amend the Scope of Services as Necessary for a Contingency Amount Not to Exceed \$5,000

Authorizing a \$36,390 Appropriation from 2021A Lease Revenue Bond Proceeds to Pay for Costs Associated with *Agreement No. 21-77* 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*

Council Member Lopez asked for a status update on the \$300,000 grant from the **California Office of Emergency Services (CalOES)**.

City Manager Starr advised the City has been awarded the grant.

The City Council took the following actions:

- (a) Approved *Agreement No. 21-77* with Yao Engineering, Inc. for electrical engineering and design services for a new main switchboard and standby generator at the Civic Center.
- (b) Authorized the City Manager to amend the scope of services as necessary for a contingency amount not to exceed \$5,000.
- (c) Authorized a \$36,390 appropriation from 2021A Lease Revenue Bond proceeds to pay for costs associated with *Agreement No. 21-77* 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*.

9. **Approval of Agreement No. 21-78 with Government Jobs.com, Inc. dba NEOGOV for Hosting and Support Services for Recruitment, Selection, Onboarding, Performance, and Tracking Software**

Authorizing a \$38,666 Transfer from the General Fund Technology Reserve Fund to the General Operating Fund for Costs Associated with Agreement No. 21-78

The City Council took the following actions:

- (a) Approval of Agreement No. 21-78 with Government Jobs.com, Inc. dba NEOGOV for Hosting and Support Services for Recruitment, Selection, Onboarding, Performance, and Tracking Software.
- (b) Authorizing a \$38,666 Transfer from the General Fund Technology Reserve Fund to the General Operating Fund for Costs Associated with Agreement No. 21-78.

D. Resolutions

1. **Adoption of Resolution No. 21-3326 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 November 15, 2021 through December 15, 2021**

The City Council adopted Resolution No. 21-3326 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 November 15, 2021 through December 15, 2021.

2. **Adoption of Resolution No. 21-3327 Adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual as the City's Policy for the Procurement of Architectural and Engineering Services for State- and Federally-Funded Transportation Projects**

The City Council adopted Resolution No. 21-3327 adopting Chapter 10 of the Caltrans Local Assistance Procedures Manual as the City's policy for the procurement of architectural and engineering services for state- and federally-funded transportation projects.

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

2. **Approval of Agreement No. 21-66 with Greyhound Lines, Inc. for Shared Use of a Single Bus Bay for Daily Commercial Bus Passenger Service and Ground Space for an Employee-Operated Ticket Vending and Customer Service Kiosk at the Montclair Transcenter**

Mayor Pro Tem Ruh received clarification from City Manager Starr about terms of the contract including nonpayment and disagreement about ticket booth location, both of which would result in termination of the contract.

Council Member Lopez shared his concerns for increased crime after reviewing information he received from an anonymous source from the Claremont Police Department regarding their crime issues at and around their Greyhound bus depot.

Mayor Dutrey requested Council Member Lopez provide any reports he received to City Manager Starr and Chief Avels so that staff can review the information. He noted the rest of the City Council needs access and time to review the same information in order to make an informed decision, and he would prefer staff review the reports to determine contributing factors to the crime issues including nearby businesses.

Council Member Martinez left the meeting at 7:45 p.m.

Discussion ensued regarding crime in relation to **Greyhound** bus depots, the frequent use of **Greyhound** bus service to transport individuals released from criminal detention centers, and security measures in place at the Montclair Transcenter.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried unanimously (4-0-1, Martinez absent), the City Council continued consideration of Agreement No. 21-66 with **Greyhound** to a future meeting, and directed staff to review and analyze the new information and update its recommendation.

X. COMMUNICATIONS

A. Department Reports

1. Human Services Department — Upcoming Holiday Programs & Events

Director of Human Services Richter announced the following programs and events:

- Holiday Food & Toy Basket Program — Donation bins were placed around Montclair, including City Hall, Senior Center, Recreation Center, Fire Station 1 and the Police Department and will be accepted through Thursday, December 9th. The Police and Fire Departments will be holding food and toy drives at **Costco** on Friday, December 3rd, and Friday, December 10th, from 10:00 a.m. to 2:00 p.m.
- Holly Jolly Holiday Event — Thursday, December 2nd, from 6:00 p.m. until 8:30 p.m. in **Alma Hofman Park**. The evening will include the lighting of the City's Christmas tree, complimentary photos with Santa and Mrs. Claus, entertainment, refreshments, and a station for writing letters to Santa. Gift lights in honor or memory of a loved one will be available for purchase.
- Holiday Home Decoration Contest — The Community Activities Commission invites you to submit your entry for the Annual Holiday Home Decoration Contest. Entry applications are available on the City website and are due by Friday, December 3rd, at 6:00 p.m. Winners will be announced at an upcoming City Council meeting.
- Dashing Through Montclair — Saturday, December 4th, starting at 2:00 p.m. and ending at 6:00 p.m. Santa's route is posted on the City's website.

2. Police Department — Flock ALPR Cameras

Executive Director of Public Safety/Police Chief Avels discussed aspects of the **Flock** ALPR Camera system, which provides a cheap and effective way to station cameras around the community for data collection and assist with solving crimes in the City as well as in surrounding cities. He noted other solutions the Department has looked into would cost much more because they require extensive infrastructure enhancements in the range of \$300,000 to \$500,000 at the four intersections where cameras would be permanently located; however, the **Flock** system is portable and would not require massive infrastructure costs. The Department would consider

40 cameras at a cost of \$2,500 per year for each camera, with an initial startup cost of about \$110,000. He discussed the capability of the software to derive data from images including license plates and descriptions of vehicles, making a database that makes it easy to find suspect vehicles even with minimal information. He noted the cities of Upland, Ontario, and Redlands have already adopted the cameras.

Council Member Lopez left the dais at 8:24 p.m.

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

1. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

Sully-Miller Construction v. City of Mont

2. Closed Session Pursuant to Government Code Section 54956.9(d)(2) Regarding Potential Litigation

One Potential Case

C. City Manager/Executive Director — No comments

D. Mayor/Chair

1. Cancellation of Monday, December 6, 2021 Regular Joint Meeting

Mayor/Chair Dutrey announced the cancellation of the next regular joint meeting due to staff and City Council member participation at the **International Conference of Shopping Centers in Las Vegas**.

2. Mayor/Chair Dutrey made the following comments:

- (a) He announced the **Montclair High School Cavaliers'** advancement in the **California Interscholastic Federation** Football Championships to the semifinals, noting they will next play against South Pasadena. He advised November 19th would be declared **MHS Football Day** in the City of Montclair to celebrate and cheer them on.
- (b) He commended Human Services Department staff on their service at the Veterans' Day recognition lunch.
- (c) He advised the Planning Commission would soon consider **Panera Bread's** application to open by **Target**.

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

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

- (a) She commended the Fire Department for quickly responding to a house fire that claimed two homes.

Council Member Lopez returned at 8:27 p.m.

- (b) She announced **Montclair Place** will be having various holiday activities and encouraged everyone to check their website for the event calendar.
- (c) She expressed her appreciation for Human Services Department employees who serve the seniors, noting staff treats the City's seniors like family.

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

- (a) He noted that he and other Council Members attended the **Hasco Outlet** grand opening event. He expressed his surprise at how many brand-name products they carried

at great prices, noting they get most of their stock from **Costco**.

- (b) He noted he also participated in the Veterans' Day lunch event to help hand out food and present certificates.
 - (c) He stated he attended the **MHS** football game where they beat **San Gabriel High School**. He encouraged everyone to buy tickets online at the **CIF** website for this Friday's game against **South Pasadena High School**.
 - (d) He noted on November 13th, **Calvary Montclair** and **Bethany Baptist Church** hosted a food drive and fed over 200 families.
 - (e) He advised that the park lights for **Montclair Little League** practice did not go on after dark, noting that staff likely did not update the timers for Daylight Savings Time.
 - (f) He provided freeway closure updates on I-10 eastbound lanes and advised a lane shift would be implemented for a week.
3. Mayor Pro Tem/Vice Chair Ruh made the following comments:
- (a) He stated he was unable to attend many recent events due to a busy work schedule.
 - (b) He commemorated Veterans' Day, formerly Armistice Day—the 11th hour of the 11th day of the 11th month in 1918, at which time the Allied powers signed a ceasefire agreement with Germany, bringing **World War I** to a close. He stated we honor those who served in any war, as well as those who serve in peacetimes on Veterans' Day. "Although we may not know them all, we owe them all."
 - (c) He reported his attendance with Mayor Dutrey at the National Community Renaissance event at the **Padua Theater**, at which **Congresswoman Norma Torres** and **Assemblymember James Ramos** were honored for their leadership in housing.
 - (d) He thanked **Congresswoman Torres** for her efforts to obtain \$2 million for upgrades to ball park facilities at **Saratoga Park**.
 - (e) He warned of a potential COVID-19 surge this winter and urged everyone to get their vaccinations or booster shots.
 - (f) He noted he looks forward to the lighting of the Christmas Tree and Dashing Through Montclair events on December 2nd and 4th.
 - (g) He recognized Thanksgiving as a special day in this country where families come together and wished everyone a Happy Thanksgiving.

F. Committee Meeting Minutes

1. Minutes of Personnel Committee Meeting of November 1, 2021

The City Council received and filed the minutes of the Personnel Committee meeting of November 1, 2021, for informational purposes.

XI. CLOSED SESSION

At 8:39 p.m., the City Council went into closed session to discuss pending and potential litigation.

XII. CLOSED SESSION ANNOUNCEMENTS

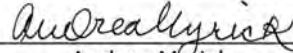
At 9:01 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss pending and

potential litigation. He advised information was received, and direction was given to staff on pending litigation. On potential litigation, information was received. He stated no further announcements would be made at this time.

XIII. ADJOURNMENT

At 9:01 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

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



Andrea Myrick
City Clerk

PENDING APPROVAL

CITY OF MONTCLAIR

TREASURER'S REPORT

FOR THE MONTH ENDING

NOVEMBER 30, 2021

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SCHEDULE 3

STATEMENT OF CASH AND INVESTMENT ACCOUNTS

GRAPH

CASH AND INVESTMENTS BY TYPE

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

NOVEMBER 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	<u>\$ 32,803,124</u>
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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 NOVEMBER 30, 2021**

<u>Fund</u>	<u>Beginning Balance</u>	<u>Receipts</u>	<u>Disbursements</u>	<u>Interfund Transfers</u>	<u>Ending Balance</u>
General Fund	\$ (2,760,498.44)	\$ 2,304,583.10	\$ 1,938,635.82	\$ 38,666.00	\$ (2,355,885.16) (1)
Gas Tax Fund	30,062.54	151,074.59	95,395.89	-	85,741.24 (2)
Road Maintenance - Section 2032	618,437.55	207,236.65	12,842.87	-	812,831.33
Measure I Fund	3,961,404.44	86,479.54	-	-	4,047,883.98
Traffic Safety	35,289.01	6,268.17	1,701.55	-	39,855.63
Disability Access Fund - Bus. License	39,649.20	880.00	-	-	40,529.20
Park Maintenance	80,593.04	6,156.80	6,681.19	-	80,068.65
Park Development	1,149,207.06	2,800.00	-	-	1,152,007.06
CDBG	(46,741.05)	-	10,850.32	-	(57,591.37) (2)
SB2 Planning Grant	(2,474.00)	-	-	-	(2,474.00) (2)
Air Quality Improvement Trust	231,144.54	-	-	-	231,144.54
SB Cty Cares Act Infrastructure	(22,787.23)	-	244.82	-	(23,032.05) (2)
Senior Nutrition Program	(51,665.65)	13,085.33	15,242.09	-	(53,822.41) (2)
American Resue Plan	4,776,276.25	-	-	-	4,776,276.25
Forfeiture Fund - State	117,684.11	-	-	-	117,684.11
Proposition 30/SB 109	121,544.00	-	-	-	121,544.00
SB 509 Public Safety	161,305.91	40,976.00	38,734.44	-	163,547.47
Forfeiture Fund-Federal/DOJ	408,328.10	-	-	-	408,328.10
Asset Seizure Fund	0.03	0.01	-	-	0.04
Section 11489 Subfund	42,092.46	-	-	-	42,092.46
Fed Asset Forfeiture-Treasury	113,959.76	-	-	-	113,959.76
School District Grant Fund	-	-	-	-	-
State Supplemental Law Enforce	419,984.63	26,169.27	-	-	446,153.90
PC 1202.5 Crime Prevention	2,150.36	13.04	-	-	2,163.40
Recycling Grant Fund	70,353.67	-	-	-	70,353.67
Homeless Emergency Aid Program	(11,361.00)	-	139.00	-	(11,500.00) (2)
Bureau of Justice Assistance	(13,020.00)	-	-	-	(13,020.00) (2)
Statewide Park Dev Grant	-	-	-	-	-
Homeless Housing Assist Preven	496.26	15,000.00	5,597.70	-	9,898.56
After School Program Fund	486,133.96	-	95,362.29	-	390,771.67
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	261,854.50	8,300.96	6,016.50	-	264,138.96
OSMD Immunization Grant	(73.76)	1,444.26	-	-	1,370.50 (2)
Kaiser Permanente Grant	4,336.50	-	-	-	4,336.50
Resource Center Grant - OMSD	36,681.52	-	645.97	-	36,035.55
Title IIIB Sr Support Services	(3,612.46)	5,251.18	2,555.64	-	(916.92) (2)
Healthy Community Strategic Plan	16,935.94	-	-	-	16,935.94
ASES Supplemental Grant	41,674.65	-	-	-	41,674.65
E.M.S. - Paramedic Fund	(1,560.26)	2,740.53	293.90	-	886.37 (3)
Economic Development	5,470,853.76	-	76,643.17	-	5,394,210.59
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,361,315.60	426,236.57	749,494.51	-	2,038,057.66
Sewer Replacement Fund	2,244,611.29	-	-	-	2,244,611.29
CFD 2011-1 (Paseos)	128,955.11	-	2,760.61	-	126,194.50
CFD 2011-2 (Arrow Station)	90,737.61	3,726.48	-	-	94,464.09
Inland Empire Utility Agency	2,296,248.90	-	471,414.00	-	1,824,834.90
Sewer Expansion Fee Fund	608,372.10	-	-	-	608,372.10
Developer Impact Fees - Local	1,171,272.90	596.00	-	-	1,171,868.90
Developer Impact Fees - Regional	75,270.83	1,340.00	-	-	76,610.83
Burrtec Pavement Impact Fees	269,849.61	-	-	-	269,849.61
PUC Reimbursement Fund-MVGS	324,111.38	-	-	-	324,111.38
Utility Underground In-Lieu	340,516.52	-	-	-	340,516.52
General Plan Update Fee	93,014.10	616.53	-	-	93,630.63
Housing Fund	555,708.20	-	-	-	555,708.20
Public Education/Govt. PEG Fee Fund	50,273.24	-	-	-	50,273.24
Infrastructure Fund	(107,579.18)	-	2,543.91	-	(110,123.09) (4)
COVID-19	(29,987.54)	-	2,081.18	-	(32,068.72)
Successor Agency Bonds-Taxable	4,796,019.53	-	-	-	4,796,019.53
Successor Agency Bonds-Tax Exempt	8,220,419.94	-	-	-	8,220,419.94
2014 Lease Revenue Bond Proceeds	(291,123.82)	-	267,936.00	-	(559,059.82)
2021 Lease Revenue Bond Proceeds	(169,260.00)	-	-	-	(169,260.00)
2014 Lease Revenue Bond Debt Svc	(1,279,371.68)	196,545.49	-	-	(1,082,826.19) (5)
2021 Lease Revenue Bond Debt Svc	871,244.00	891,064.62	-	-	1,762,308.62
Contingency Fund	233,836.96	-	-	-	233,836.96 (1)
Assigned General Fund Reserves	9,580,509.08	-	-	(38,666.00)	9,541,843.08 (1)
TOTALS	\$ 48,221,395.36	\$ 4,398,585.12	\$ 3,803,813.37	\$ -	\$ 48,816,167.11

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.

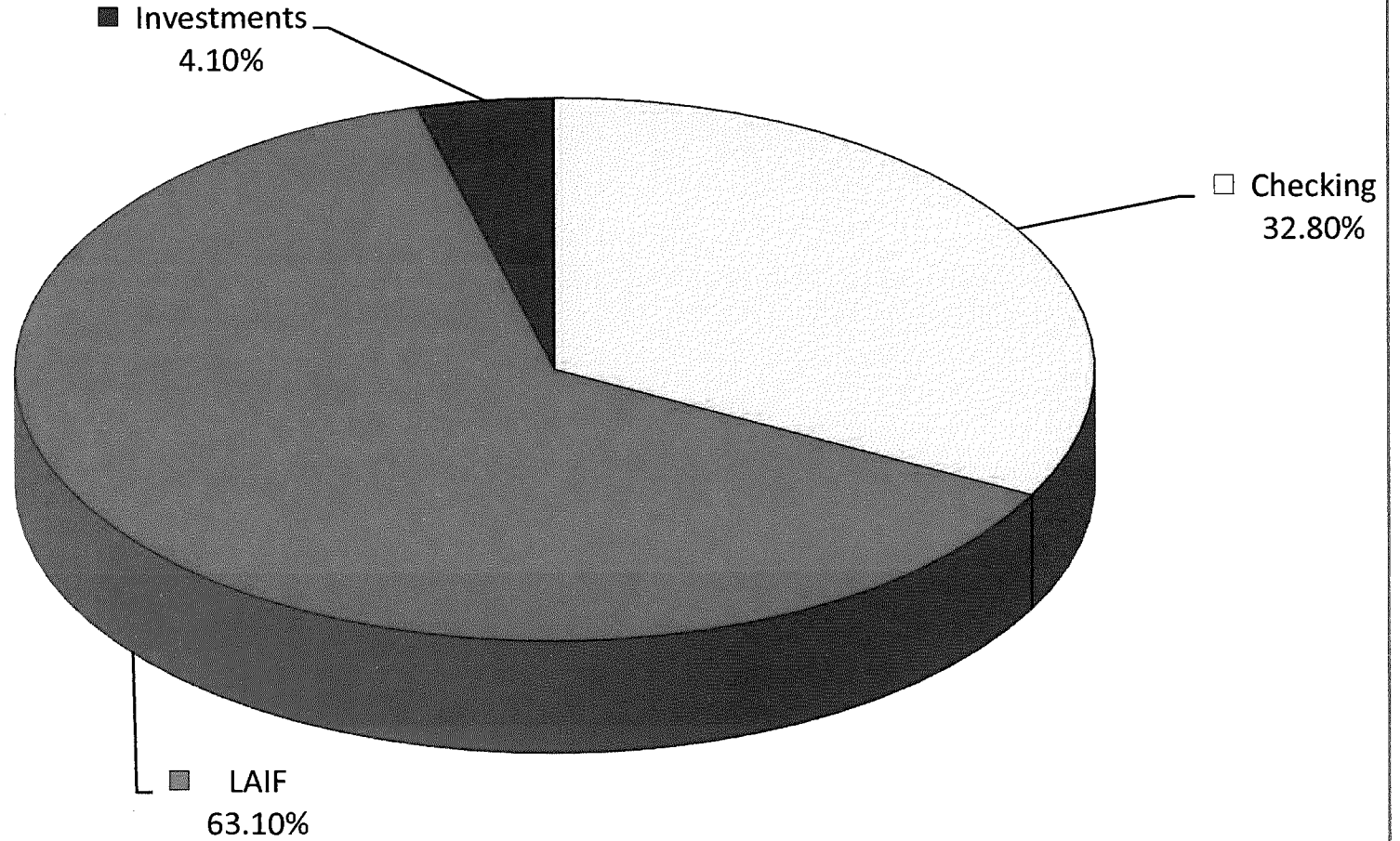
**CITY OF MONTCLAIR
STATEMENT OF CASH AND INVESTMENT ACCOUNTS
AS OF NOVEMBER 30, 2021**

	<u>Par Value</u>	<u>Purchase Date</u>	<u>Maturity Date</u>	<u>Coupon Interest Rate</u>	<u>Current Market Value</u>	<u>Balance at Cost</u>	<u>Totals</u>
CHECKING ACCOUNT							
Checking Account							\$ 16,010,574.42
Asset Seizure Account							\$ 2,468.69
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				0.210%	30,842,239.35	30,803,124.00	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,842,239.35</u>		\$ 32,803,124.00
U.S. AGENCY SECURITIES							
					<u>\$ -</u>		<u>\$ -</u>
TOTAL							<u><u>\$ 48,816,167.11</u></u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
November 30, 2021**

Total Cash & Investments \$48,816,167



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

FOR THE MONTH ENDING

November 30, 2021

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

COMBINED OPERATING FUND

Operating	<u>11,343.87</u>	\$ 11,343.87
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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

\$ 632,074.83

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

Checking Account

US Bank

632,074.83

TOTAL CASH

632,074.83

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

November 30, 2021

City of Montclair
Final Warrant Register
Council Date 12/20/2021
Regular Warrants
Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	5,823.85	5,823.85
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	<hr/> 0.00	<hr/> 5,823.85	
			5,823.85
		November 2021 Total	<u><u>5,823.85</u></u>

Note: Reimburse City for 11/7, and 11/21 payrolls

Vice Chair Ruh

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT**

FOR THE MONTH ENDING

November 30, 2021

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CASH AND INVESTMENTS GRAPH

Schedule 1

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

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			610,733.72
Investments			
LAIF	0.21%	1,712,948.71	<u>1,712,806.60</u>
TOTAL CASH & INVESTMENTS			<u>2,323,540.32</u>

NOTE:

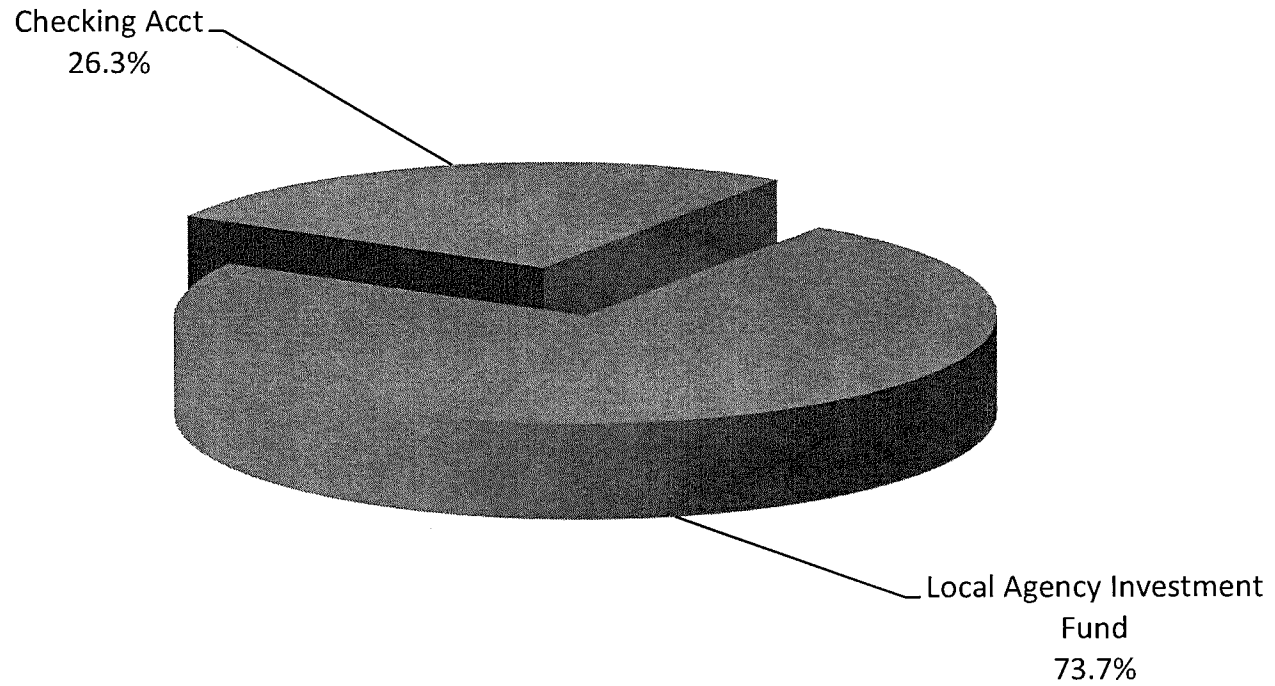
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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
November 30, 2021**

Total Cash & Investments - \$2,323,540



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

November 30, 2021

City of Montclair
Final Warrant Register
Council Date 12/20/2021
Regular Warrants
Checking Account: MHC

Warrants	ACH Transfers	Voided Checks	US Bank transfers	Totals
10,832.21	0.00	0.00	26,767.65	37,599.86

November 2021 Total

37,599.86

US Bank transfers:

Reimburse City for 11/7 payroll

Reimburse City for 11/21 payroll

Vice Chair Ruh

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

Schedule 1

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

	<u>Amount</u>
Checking Account	
US Bank	6,562.16
TOTAL CASH	\$ <u>6,562.16</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
November 30, 2021**

City of Montclair
Final Warrant Register
Council Date 12/20/2021
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
November 2021 Total			<u><u>0.00</u></u>

Vice Chair Ruh