

# CITY OF MONTCLAIR

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

## AGENDA

MONDAY, APRIL 4, 2022  
7:00 p.m.



**Mayor**

Javier "John" Dutrey

**Mayor Pro Tem**

Bill Ruh,

**Council Members**

Tenice Johnson

Corysa Martinez

Benjamin "Ben" Lopez

**City Manager**

Edward C. Starr

**City Attorney**

Diane E. Robbins

**City Clerk**

Andrea M. Myrick

Location

Council Chamber  
5111 Benito Street  
Montclair, CA 91763

Webinar Link

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

Dial #

1-669-900-6833

Meeting ID

937-1715-0550



**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, April 4, 2022  
7:00 p.m.

*Remote Participation Information:*

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

*If you want to submit 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 online 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](mailto:cityclerk@cityofmontclair.org) at least one hour before the meeting begins.*

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

## **AGENDA**

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

**II. INVOCATION**

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

**III. PLEDGE OF ALLEGIANCE**

**IV. ROLL CALL**

**V. PRESENTATIONS** — None

**VI. PUBLIC COMMENT**

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

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

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

**VII. PUBLIC HEARINGS**

- A. Consider Adoption of Resolution No. 22-3341 Approving the Issuance by the Independent Cities Finance Authority of Taxable Mobile Home Park Revenue Refunding Bonds and Tax-Exempt Mobile Home Park Revenue Refunding Bonds in an Aggregate Principal Amount Not to Exceed \$30,000,000 for Hacienda Mobile Home Park, Monterey Manor Mobile Home Estates, and Villa Montclair Mobile Home Park, Each Located in the City of Montclair [CC] 5

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
  - 1. Special Meeting — March 21, 2022 [CC] 130
  - 2. Regular Joint Meeting — March 21, 2022 [CC/SA/MHC/MHA/MCF] 131
- B. Administrative Reports
  - 1. Consider Approval of Warrant Registers & Payroll Documentation [CC] 21
  - 2. Consider Approval of the Sunset Park Beautification Project Associated with the Grant Award from the Clean California Local Grant Program [CC]  
Consider Authorizing the Filing of a California Environmental Quality Act Notice of Exemption for the Sunset Park Beautification Project [CC] 22
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- C. Agreements
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Consider Authorizing a \$50,000 Appropriation from the Contingency Reserve Fund for Costs Related to Agreement No. 22-22 [CC] 30
  - 2. Consider Approval of Agreement No. 22-23 with City of Hope to Accept Funding for Community Health Programs Through the Healthy Montclair Initiative [MCF] 48
  - 3. Consider Amending the 2019-2024 Capital Improvement Program to Include the Public Works/Community Development Counter and Safety Glass Construction Project [CC]  
Consider Award of Contract to Rasmussen Brothers Construction, Inc. in the Amount of \$51,845 for Construction of the Public Works/Community Development Counter and Safety Glass Construction Project [CC]  
Consider Approval of Agreement No. 22-24 with Rasmussen Brothers Construction, Inc. for Construction of the Public Works/Community Development Counter and Safety Glass Construction Project [CC]  
Consider Authorizing a \$57,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Construction of the Public Works/Community Development Counter and Safety Glass Construction Project [CC]  
Consider Authorizing a \$5,155 Construction Contingency for the Public Works/Community Development Counter and Safety Glass Construction Project [CC] 56

4.	Consider Approval of Agreement No. 22-25 with Inland Signs Inc. for Construction of the City Hall Monument Sign Replacement Project [CC] Consider Authorizing a \$60,000 Appropriation from 2021 Lease Revenue Bond Proceeds and \$35,000 from the Facility Maintenance Fund for Construction of the City Hall Monument Sign Replacement Project [CC] Consider Authorizing a \$5,000 Construction Contingency for the City Hall Monument Sign Replacement Project [CC]	65
5.	Consider Approval of Agreement No. 22-28 with the San Joaquin County Office of Education’s Center for Educational Development and Research (SJCOE/CEDR) to Advertise Job Postings on EDJOIN.org for the Montclair After-School Program [CC] Consider Authorizing the Director of Human Services to Sign Agreement No. 22-28 with SJCOE/CEDR [CC]	74
6.	Consider Approval of Agreement No. 22-29 with the County of San Bernardino Authorizing the County’s Use of the Local Subdivisions’ Allocations (Including Montclair’s Allocation) of California Opioid Settlement Funds [CC]	78
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1.	Consider Adoption of Resolution No. 22-3339 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of April 4, 2022, through May 4, 2022 [CC]	103
2.	Consider Adoption of Resolution No. 22-3345 Approving the Tree City USA Application for 2022 and Authorizing the Director of Public Works to Sign the Application [CC]	107
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<b>X.</b>	<b>BUSINESS ITEMS</b>	
A.	Consider Adoption of Resolution No. 22-3344 Disapproving and Censuring Certain Conduct and Behavior of Montclair City Council Member Benjamin Lopez and Ratifying Protective Actions Taken and Recommended by the City Manager [CC]	111
<b>XI.</b>	<b>COMMUNICATIONS</b>	
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B.	City Attorney	
1.	Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(2) Regarding Potential Litigation [CC] <i>1 Potential Case</i>	
C.	City Manager/Executive Director	



D. Mayor/Chairperson	
1. Consider Reorganization of City Council Committee/Liaison Assignments [CC]	124
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<b>XII. CLOSED SESSION</b>	
<b>XIII. CLOSED SESSION ANNOUNCEMENTS</b>	
<b>XIV. ADJOURNMENT</b>	

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, April 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 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](mailto: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](mailto: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/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, March 31, 2022.*



# CITY COUNCIL AGENDA REPORT

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**DATE:** APRIL 4, 2022 **FILE I.D.:** MHP030/MHP060/MHP090

**SECTION:** PUBLIC HEARINGS **DEPT.:** CITY MGR.

**ITEM NO.:** A **PREPARER:** E. STARR

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 22-3341 APPROVING THE ISSUANCE BY THE INDEPENDENT CITIES FINANCE AUTHORITY OF TAXABLE MOBILE HOME PARK REVENUE REFUNDING BONDS AND TAX-EXEMPT MOBILE HOME PARK REVENUE REFUNDING BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 FOR HACIENDA MOBILE HOME PARK, MONTEREY MANOR MOBILE HOME ESTATES, AND VILLA MONTCLAIR MOBILE HOME PARK, EACH LOCATED IN THE CITY OF MONTCLAIR

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**REASON FOR CONSIDERATION:** In 1998, the former Montclair Redevelopment Agency ("RDA") established a [Mobile Home] Park Acquisition Program ("Program"). The purpose of the Program was to establish a 501(c)(3) to acquire, own, and manage mobile home parks in Montclair with affordability restrictions. Augusta Communities LLC, a California Limited Liability Company ("Augusta"), was the 501(c)(3) established for that purpose.

To facilitate the acquisition and maintenance of three mobile home parks in Montclair (Hacienda Mobile Home Park, Monterey Manor Mobile Home Estates, and Villa Montclair Mobile Home Park — singularly the "Project", and collectively, 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 (collectively, the "Prior Bonds"). Each of the Prior Bonds, through 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 with each of the Projects (collectively, the "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 Projects.

Pursuant to Promissory Notes and Affordable Housing Agreements, the RDA Loans were 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 refinance the Prior Bonds through issuance of Series 2012A Mobile Home Park Revenue Refunding Bonds and Series 2012B Mobile Home Park Revenue Subordinate Refunding Bonds (together, the "2012 Bonds"), issued by the Independent Cities Finance Authority ("ICFA"). The City is an Associate Member of ICFA.

Augusta is now proposing the refinancing of the 2012 Bonds through ICFA to take advantage of more favorable market rates and a new payoff term that will lower debt service and improve cash flow. Due to volatility in the taxable bond market, Augusta is proposing to split the transaction into taxable and tax-exempt refunding bonds, with the latter transaction triggering a TEFRA hearing.

The proposed 2022 refinancing (the "2022 Bonds") of the 2012 Bonds is projected to secure approximately \$7.5 million in new bond income for Augusta for the following purposes:

1. Refund the 2012 bonds previously issued by ICFA;
2. Finance costs of issuing the bonds;
3. Maintenance and expansion of resident services program;
4. Maintenance and renovation of the Projects;
5. Real property acquisition; and
6. Cash flow, in part for the repayment to the Montclair Housing Authority (the "MHA") of RDA Loans, plus accrued interest as follows:
  - a) Payment by Augusta to the City shall be for the aggregated sum of \$3,160,403.14, calculated as of March 1, 2022, with interest continuing to accrue in the amount of \$145.53 per day ("Per Diem Interest") until payment is received by the City in full — this total gives credit for in-lieu payments made by Augusta in the sum of \$44,275. Payment to the MHA will be made by an irrevocable instruction directing the trustee of the Bonds to pay the full amount of the RDA Loans to the MHA. Full payment of the RDA Loans is a condition precedent to the City's approval of the refinancing of the 2012 Bonds. Funds will be deposited with the MHA and restricted to affordable housing projects at the place and time of the City's choosing. The MHA received the housing assets of the former RDA following the dissolution of community redevelopment agencies following legislation passed in 2011. The MHA is the successor in interest to all housing assets of the former RDA — this transfer of assets occurred following the dissolution of community redevelopment agencies pursuant to legislation passed in 2011 (AB 1X 26) and the California Supreme Court's decision in *California Redevelopment Association v. Matosantos*.
  - b) Deeds of Trust secure the RDA Loans for each Project. Upon full payment of the RDA Loans, the MHA shall cause the release and/or reconveyance of the Deeds of Trust through a deed of reconveyance — a document that transfers title of a property to the borrower once a mortgage or secured loan is paid off.

In consideration of the City's past support of the Projects and its cooperation in approving Resolution No. 22-3341, Augusta has agreed to the inclusion of certain language (Additional Regulatory Agreement Provisions), as provided for in **Exhibit A** to Resolution No. 22-3341, in each Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreements") for the Projects. Regulatory Agreements are by and among ICFA (as "Issuing Authority"), U.S. Bank National Association (as "Trustee"), and Augusta (as "Borrower").

The Regulatory Agreements provide for extension of affordability covenants regarding the Projects. The MHA will be a beneficiary of the Regulatory Agreements and shall have the right to enforce the affordability covenants as contained in Sections 3 and 4 of each Project's respective Regulatory Agreement as well as those provisions of the Affordable Housing Agreements, which provide for the operation of affordable rental housing. The right of enforcement shall be subordinate to the rights of ICFA and the Trustee to enforce such provisions for so long as (i) any of the Bonds remain outstanding, and (ii) any bonds, which refund the 2022 Bonds, remain outstanding, provided that the period during which

the affordability covenants as described in each of the Regulatory Agreements is extended. A copy of each Project's proposed Regulatory Agreement is attached to this agenda report. The MHA shall have no right to enforce provisions of the Affordable Housing Agreements beyond their original terms.

As an Associate Member of ICFA, the City is required to approve the proposed refinancing of the 2012 Bonds as a prerequisite for ICFA to complete the refinancing structure for the 2022 Bonds. The City is not a direct participant in the refinancing structure, has no liability as it relates to repayment of the bonds, and provides no oversight responsibility related to the refinancing structure or the cash flow and associated service programs; therefore, the City is not typically required to conduct a public hearing related to consideration of the proposed refinancing of the 2012 Bonds. However, because Augusta is proposing to split the transaction into taxable and tax-exempt refunding bonds, the latter triggers a TEFRA hearing as required by § 147(f)(2)(B)(i) of the Internal Revenue Code. TEFRA hearings were instituted by the federal Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA").

1. *What is a TEFRA Hearing?* A TEFRA hearing is an IRS requirement for any non-profit borrower seeking tax-exempt bonds through a conduit issuer, such as ICFA. The hearing is held to allow members of the public to comment, contest, oppose, or support the use of tax-exempt bonds for a non-profit borrower that is providing a public benefit. There is no required presentation by either the City or the borrower regarding the projects to be financed at a TEFRA hearing, and no additional information beyond the description in the TEFRA notice is provided.
2. *Who conducts a TEFRA hearing?* Tax-exempt bonds are qualified "private activity bonds" for the purposes of the Internal Revenue Service Code of 1986, and the proposed issuance shall be approved by the elected representatives (the City Council) of the governmental unit having jurisdiction over the area where the Projects are located.
3. *When should a TEFRA hearing be held?* The TEFRA hearing must be held by the City Council prior to the Augusta Board meeting (scheduled for April 13, 2022) at which a financing application is before the Board. The pre-Board TEFRA hearing allows the Board to address any issues that may arise at the TEFRA hearing.
4. *Is there a cost to the City related to a TEFRA hearing?* The City may apply a charge for staff, legal, and other costs. The borrower (Augusta) may have other, separate costs including legal counsel costs.
5. *Are there TEFRA Notice requirements?* A TEFRA Notice must be published seven calendar days prior to the TEFRA public hearing. The notice provides the public with the time, location, and Zoom/telephone call-in information for the hearing. The IRS has approved websites for TEFRA Notice posting. The City posted the TEFRA Notice as required on Monday, March 28, 2022.

The processes outlined above, including completion of the extension of affordability covenants through Regulatory Agreements, payment of the RDA Loans to the MHA, the TEFRA hearing, release and reconveyance of the Deeds of Trust, and issuance of the 2022 Bonds by ICFA require approval of the City Council through adoption of Resolution No. 22-3341, conditioned upon (i) the payment of the RDA Loan amount by the Trustee of the Bonds to the MHA, concurrent with the issue of the 2022 Bonds, and (ii) inclusion within the Regulatory Agreements of the Additional Regulatory Agreement Provisions. Adoption of Resolution No. 22-3341 constitutes approval of issuance of the 2022 Bonds by ICFA.

Maintenance of affordability covenants through the Regulatory Agreements will allow the City to address its affordable housing obligations as required through the Southern California Association of Governments (SCAG) Regional Housing Needs Assessment (RHNA).

Neither the City nor the MHA shall have any responsibility or liability with respect to the 2022 Bonds or the Projects. The 2022 Bonds shall not constitute a debt to the City or the MHA, and payment on the 2022 Bonds (including principal, prepayment premium, if any, and interest on the 2022 Bonds) shall be the sole responsibility of Augusta. Finally, adoption of Resolution No. 22-3341 shall not obligate the City or the MHA to (i) provide any financing related to the Projects; (ii) except as otherwise provided by the Municipal Code, approve any application or take any other action in connection with acquisition or operation of the Projects; (iii) make any contribution or advance any funds to ICFA; or (iv) take any further action with respect to ICFA or its membership. The MHA would continue to enforce the City's Mobile Home Rent Control Ordinance and monitor compliance with the affordability covenants in the Regulatory Agreements.

Resolution No. 22-3341 is attached and each of the proposed Regulatory Agreements are included in the City Council's agenda packets for consideration by the City Council and for review by the Montclair Housing Authority Board of Directors.

**BACKGROUND:** Augusta 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 (referred to hereafter as the "Projects"). The six communities host an estimated 927 spaces for mobile homes, of which 440 spaces are in Montclair mobile home park communities.

Montclair mobile home park communities served by Augusta include the following:

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 Montclair Redevelopment Agency (RDA) established a [Mobile Home] Park Acquisition Program (the "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 Program would be owned, managed, and operated by Augusta 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 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 (the "RDA Loans"), plus 2 percent interest per annum, to provide additional financing with respect to the sequential acquisition and rehabilitation of the Projects.

Following the February 2012 dissolution of community redevelopment agencies in California, the MHA became the beneficiary for payment on the RDA Loans. According to a repayment schedule in the Operating Statement ("OS") for the 2012 Bonds, Augusta was to make annual payments of \$159,000 to the MHA on the RDA Loans.

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, 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 in the amounts identified below:

1. **Montclair RDA Villa Montclair Loan.** The Montclair RDA entered into an Affordable Housing Agreement (Agreement No. 99-50) dated July 1, 1999 (the "Villa Montclair Affordable Housing Agreement") with Augusta, pursuant to which the RDA provided a loan to Augusta in the amount of \$325,000, with interest at 2 percent (the "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 (Agreement No. 00-126) dated December 1, 2000 (the "Monterey Manor Affordable Housing Agreement") with Augusta, pursuant to which the RDA provided a Residual Receipts Loan to Augusta in the amount of \$750,000, with interest at 2 percent (the "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 (Agreement No. 02-145) dated November 1, 2002 (the "Hacienda Affordable Housing Agreement") with Augusta, pursuant to which the RDA provided a Residual Receipts Loan to Augusta in the amount of \$1 million (the "Montclair RDA Hacienda Loan"), amended (via Agreement No. 05-115) to \$1.4 million, 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.

The proposed 2022 refinancing (the "2022 Bonds") is projected to secure approximately \$7.5 million in new bond income for Augusta for a number of operational purposes including full payment on the RDA Loans. To date, approximately \$417,000 in residual receipt payments on the RDA Loans have been made to the City, with an estimated balance of \$3,160,403.14 due, calculated as of March 1, 2022, with interest continuing to accrue in the amount of \$145.53 per day ("Per Diem Interest") until payment is received by the City in full — this total gives credit for in-lieu payments made by Augusta in the sum of \$44,275.

Payment to the MHA will be made by an irrevocable instruction directing the trustee of the Bonds to pay the full amount of the RDA Loans to the MHA. Full payment of the RDA Loans is a condition precedent to the City's approval of the refinancing of the 2012 Bonds. Funds will be deposited with the MHA and restricted to affordable housing projects at the place and time of the City's choosing. The MHA received the housing assets of the former RDA following the dissolution of community redevelopment agencies following legislation passed in 2011.

As indicated above, the RDA Loans are secured by Deeds of Trust for each Project. Upon full payment of the RDA Loans, the MHA shall cause the release and/or reconveyance of the Deeds of Trust through a deed of reconveyance.

**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 (collectively, 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, with consent of the City, refinanced the Prior Bonds through the Independent Cities Finance Authority (ICFA). ICFA is a joint powers authority organized under California law that specializes in financing non-profit mobile home parks projects. Through an Indenture of Trust, ICFA issued Mobile Home Park Revenue Refunding Bonds Series 2012A and Mobile Home Park Subordinate Revenue Refunding Bonds Series 2012B (together, the "2012 Bonds"), with proceeds from the bonds 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. Included in the 2012 Operating Statement (OS) for the bonds was a payment schedule on the RDA loans, achieved through cash flow generated through operating revenues.

Consistent with previous Indenture of Trusts, the MHA [prior to the 2012 Bond Refinancing, the RDA had been dissolved in compliance with *California Redevelopment Association et al. v. Ana Matosantos* and the MHA became the beneficiary to housing-related activities of the former Montclair RDA] and Augusta, in relation to the 2012 Bonds, entered into a regulatory agreement and declaration of restrictive covenants with respect to each of the Projects 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 MHA, 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, Regulatory Agreements, 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 and sell taxable and tax-exempt Mobile Home Park Revenue Refunding Bonds (Augusta Communities Mobile Home Park Pool) in one or more series (the "2022 Bonds") in an aggregate principal amount of not to exceed \$30 million. Proceeds from the sale of the 2022 Bonds are intended to be used to make a loan to Augusta to refund the 2012 Bonds and generate approximately \$7.5 million in new bond money. Among other purposes, the new cash flow would be used to pay off the RDA Loans and accrued interest, and maintain maintenance and capital accounts. The Projects located in Montclair would be used to secure repayment of the Bonds. The tax-exempt bonds triggered the TEFRA hearing for the April 4, 2022, City Council meeting.

Pursuant to requirements of ICFA and provisions of the 2012 Bonds, Augusta is required to secure the City's approval to refinance the bonds – achieved through adoption of Resolution No. 22-3341; although, the City is not required to consent to the refinancing proposal.

Neither the City nor the MHA shall have any responsibility or liability with respect to the 2022 Bonds or the Projects. The 2022 Bonds shall not constitute a debt to the City or the MHA, and payment on the 2022 Bonds (including principal, prepayment premium, if any, and interest on the 2022 Bonds) shall be the sole responsibility of Augusta. Finally, adoption of Resolution No. 22-3341 shall not obligate the City or the MHA to (i) provide any financing related to the Projects; (ii) except as otherwise provided by the Municipal Code, approve any application or take any other action in connection with acquisition or operation of the Projects; (iii) make any contribution or advance any funds to ICFA; or (iv) take any further action with respect to ICFA or its membership. The MHA would continue to enforce the City's Rent Control Ordinance and monitor compliance with the affordability covenants in the Regulatory Agreements.

**Due Diligence.** Due to the Montclair City Council's fiduciary responsibilities to the community, the City Council engaged CSG/Advisors to conduct due diligence on the proposed refinancing 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?

Based on the results of the due diligence process, City staff recommends adoption of Resolution No. 22-3341, authorizing the refinancing of the 2012 Bonds through ICFA and using the opportunity to receive full payment on the RDA Loans, plus interest at two percent per annum, with the MHA as beneficiary. Repaid RDA Loans would be used for other affordable housing projects at the place and time of the City's choosing.

**Benefits to Augusta and the City from Refinancing of 2012 Bonds.** The proposed refinancing of the 2012 Bonds is projected to secure approximately \$7.5 million in new bond income for Augusta for the following purposes:

1. Refund the 2012 bonds previously issued by ICFA;
2. Finance costs of issuing the bonds;
3. Maintenance and expansion of resident services program;
4. Maintenance and renovation of the Projects;
5. Real property acquisition; and
6. Cash flow, in part for the repayment to the MHA of RDA Loans, plus accrued interest as follows:
  - a) Payment by Augusta to the City shall be for the aggregated sum of \$3,160,403.14, calculated as of March 1, 2022, with interest continuing to accrue in the amount of \$145.53 per day ("Per Diem Interest") until payment is received by the City in full – this total gives credit for in-lieu payments made by Augusta in the sum of \$44,275. Payment to the MHA will be made by an irrevocable instruction directing the trustee of the Bonds to pay the full amount of the RDA Loans to the MHA. Full payment of the RDA Loans is a condition precedent to the City's approval of the refinancing of the 2012 Bonds. Funds will be deposited with the MHA and restricted to affordable housing projects at the place and time of the City's choosing. The MHA received the housing assets of the former RDA following the dissolution of community redevelopment agencies following legislation passed in 2011.
  - b) Deeds of Trust secure the RDA Loans for each Project. Upon full payment of the RDA Loans, the MHA shall cause the release and/or reconveyance of the Deeds of Trust through a deed of reconveyance – a document that transfers title of a property to the borrower once a mortgage or secured loan is paid off.

Terms of the refinancing proposal for the 2022 Bonds includes the following:

1. Continuation of affordability covenants as provided for in the Regulatory Agreements. The Regulatory Agreements require the parks to be owned, managed, operated and maintained as affordable residential rental projects.
2. Payment by Augusta to the City the aggregated sum of \$3,160,403.14, calculated as of March 1, 2022, with Per Diem Interest continuing to accrue in the amount of \$145.53 per day until payment is received by the City in full – this total gives credit for in-lieu payments made by Augusta in the sum of \$44,275. Payment to the MHA will be made by an irrevocable instruction directing the trustee of the Bonds to pay the full amount of the RDA Loans to the MHA. Full payment of the RDA Loans is a condition precedent to the City's approval of the refinancing of the 2012 Bonds. Funds will be deposited with the MHA and restricted to affordable housing projects at the place and time of the City's choosing. The MHA received the housing assets of the former RDA following the dissolution of community redevelopment agencies following legislation passed in 2011.

3. Neither the City nor the MHA shall have any responsibility or liability with respect to the 2022 Bonds or the Projects. The 2022 Bonds shall not constitute a debt to the City or the MHA, and payment on the 2022 Bonds (including principal, prepayment premium, if any, and interest on the 2022 Bonds) shall be the sole responsibility of Augusta. Finally, adoption of Resolution No. 22-3341 shall not obligate the City or the MHA to (i) provide any financing related to the Projects; (ii) except as otherwise provided by the Municipal Code, approve any application or take any other action in connection with acquisition or operation of the Projects; (iii) make any contribution or advance any funds to ICFA; or (iv) take any further action with respect to ICFA or its membership. The MHA would continue to enforce the City's Mobile Home Rent Control Ordinance and monitor compliance with the affordability covenants in the Regulatory Agreements.

**Housing Affordability and Community Maintenance.** Augusta reports that rents at the Projects are controlled by the City's rent control ordinance and remain in compliance with the occupancy and affordability requirements of the various regulatory agreements. The City's objective in approving the 2022 Bonds is to ensure that affordability requirements continue at the Projects.

The current average space rent in the three mobile home parks is reported as \$626 per month. Rental assistance, offered to qualified households, comes in a variety of forms including rent credits, rent rebates, landscaping and paint credits, Good Neighbor home improvements grants, emergency short-term rental assistance, and bereavement credits.

Augusta has used cash flow generated by bond refinancing, and other grants, to maintain a program of improvements to the three mobile home parks, including street rehabilitation, landscaping improvements, clubhouse renovations, installation of broadband internet, water system upgrades, roof replacements, pool renovations, and electric and gas utility system replacement. Residents also enjoy a variety of service programs that include vaccination clinics, educational scholarships, school supply giveaway programs, teen leadership opportunities, youth summer camps, and a variety of community-oriented social events.

Demographic data for all three parks, combined, is summarized in **Table 1**, below:

**Table 1**  
**Augusta Communities Montclair Mobile Home Parks**  
**(Villa Montclair**  
**Monterey Manor Mobile Home Estates**  
**Hacienda Mobile Home Park)**  
**Demographic Summary, All Parks**

Total Residential Spaces	441
Estimated Population	<b>1,490</b>
Average Household Income	\$38,595
Average Monthly Rent	\$626
Percent of Households on Financial Assistance	08%
Percent of Households Extremely Low	26%
Percent of Households Very Low	27%
Percent of Household Low	27%
Percent of Households Medium+	19%
Percent of Households Unknown Income	02%

**FISCAL IMPACT:** Resolution No. 22-3341 requires the repayment of RDA Loans to the MHA, as beneficiary to the Montclair RDA, plus accrued interest at the rate of 2 percent per annum.

The aggregated sum of the payment on the RDA Loans is \$3,160,403.14, calculated as of March 1, 2022, with interest continuing to accrue in the amount of \$145.53 per day until payment is received by the City in full — this total gives credit for in-lieu payments made by Augusta in the sum of \$44,275.

Payment to the MHA will be made by an irrevocable instruction directing the trustee of the Bonds to pay the full amount of the RDA Loans to the MHA. Full payment of the RDA Loans is a condition precedent to the City's approval of the refinancing of the 2012 Bonds.

Funds will be deposited with the MHA and restricted to affordable housing projects at the place and time of the City's choosing.

Neither the City nor the MHA shall have any responsibility or liability with respect to the 2022 Bonds or the Projects.

The 2022 Bonds shall not constitute a debt to the City or the MHA, and payment on the 2022 Bonds (including principal, prepayment premium, if any, and interest on the 2022 Bonds) shall be the sole responsibility of Augusta.

Adoption of Resolution No. 22-3341 shall not obligate the City or the MHA to (i) provide any financing related to the Projects; (ii) except as otherwise provided by the Municipal Code, approve any application or take any other action in connection with acquisition or operation of the Projects; (iii) make any contribution or advance any funds to ICFA; or (iv) take any further action with respect to ICFA or its membership.

The City Council's approval of the proposal to refinance the 2012 Bonds is solely to satisfy the requirements of the 2012 Joint Powers Agreement between the City and ICFA, which requires the City Council to consider and approve the refinancing.

**RECOMMENDATION:** Staff recommends City Council adopt Resolution No. 22-3341 approving the issuance by the Independent Cities Finance Authority of Taxable Mobile Home Park Revenue Refunding Bonds and Tax-Exempt Mobile Home Park Revenue Refunding Bonds in an Aggregate Principal Amount not to exceed \$30,000,000 for Hacienda Mobile Home Park, Monterey Manor Mobile Home Estates, and Villa Montclair Mobile Home Park, each located in the City of Montclair.

RESOLUTION NO. 22-3341

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING, SUBJECT TO THE TERMS AND CONDITIONS HEREIN SET FORTH, THE ISSUANCE BY THE INDEPENDENT CITIES FINANCE AUTHORITY OF TAXABLE MOBILE HOME PARK REVENUE REFUNDING BONDS AND TAX-EXEMPT MOBILE HOME PARK REVENUE REFUNDING BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$30,000,000 FOR HACIENDA MOBILE HOME PARK, MONTEREY MANOR MOBILE HOME ESTATES, AND VILLA MONTCLAIR MOBILE HOME PARK, EACH LOCATED IN THE CITY OF MONTCLAIR.**

**WHEREAS**, certain cities of the State of California (collectively, the “Members”) have entered into a Joint Powers Agreement (the “Joint Powers Agreement”) establishing the Independent Cities Finance Authority (the “Authority”) and prescribing its purposes and powers, and providing, among other things, for associate members of the Authority (an “Associate Member”); and

**WHEREAS**, the Authority has been formed for the purpose, among others, of assisting its Members and Associate Members in the raising of capital to finance the capital improvement needs of Local Agencies (as defined in the Joint Powers Agreement), to provide for home mortgage financing with respect to those Members or Associate Members that are either a city or a county of the State of California, to provide financing in connection with the improvement, construction, acquisition, creation, rehabilitation and preservation of affordable housing within the boundaries of the Members and Associate Members, and to provide financing in accordance with the provisions of applicable law in connection with other projects and programs that are in the public interest and which benefit Members and Associate Members including making loans to tax-exempt organizations from the proceeds of mortgage revenue bonds to finance the acquisition of multifamily rental housing, including mobile home parks, under the provisions of Chapter 8 of Part 5 of Division 31 (commencing with Section 52100) of the Health and Safety Code; and

**WHEREAS**, the City of Montclair (the “City”) is an Associate Member of the Authority; and

**WHEREAS**, the Authority proposes to issue its (i) Mobile Home Park Revenue Refunding Bonds (Augusta Communities Mobile Home Park Pool) (Federally Taxable) (the “Taxable Bonds”) and (ii) Mobile Home Park Revenue Refunding Bonds (Augusta Communities Mobile Home Park Pool) (the “Tax-Exempt Bonds” and together with the Taxable Bonds, the “Bonds”), each in one or more series; and

**WHEREAS**, Augusta Communities LLC, a California limited liability company (the “Owner”), has requested that the Authority issue and sell the Bonds in an aggregate principal amount of not to exceed \$30,000,000; and

**WHEREAS**, Owner is a closely related entity to each of Augusta Homes Villa Montclair Corporation, a California nonprofit public benefit corporation (“AH Villa”) and Augusta Homes, a California nonprofit public benefit corporation (“AH Hacienda”); and

**WHEREAS**, the proceeds from the sale of the Bonds, if any are issued, are intended to be used to make a loan to Owner, or a related party, to be used, along with other funds available to the Owner, to refund certain revenue bonds previously issued by the Authority, the proceeds of which were loaned to the Owner to finance the acquisition and renovation of (i) a mobile home park with approximately 204 spaces known as the Hacienda Mobile Home Park located in the City at 4361 Mission Boulevard, (ii) a mobile home park with approximately 140 spaces known as the Monterey Manor Mobile Home Estates located in the City at 11250 Ramona Avenue and (iii) a mobile home park with approximately 96 spaces known as the Villa Montclair Mobile Home Park located in the City at 5580 Moreno St. (collectively, the “Projects”); (iv) finance additional renovations to be made to the Projects; and (v) finance certain costs of issuing the Bonds; and

**WHEREAS**, the Owner will be the owner and operator of the Projects; and

**WHEREAS**, the City of Montclair Redevelopment Agency, a public body, corporate and politic (“Former Agency”) entered into the following agreements: (i) with AH Hacienda, an agreement entitled “Affordable Housing Agreement” for the Hacienda Mobile Home Park dated as of November 1, 2002 (the “Hacienda Affordable Housing

Agreement”); (ii) with AH Villa, an agreement entitled “Affordable Housing Agreement” for the Villa Montclair Mobile Home Park dated as of July 1, 1999 (the “Villa Montclair Affordable Housing Agreement”); and (iii) with AH Villa, an agreement entitled “Affordable Housing Agreement” for the Monterey Manor Mobile Home Estates dated as of December 1, 2000 (the “Monterey Manor Affordable Housing Agreement” and, together with the Hacienda Affordable Housing Agreement and the Villa Montclair Affordable Housing Agreement, the “Montclair Affordable Housing Agreements”); and

**WHEREAS**, in connection with the implementation of that Montclair Affordable Housing Agreements, the Former Agency made loans (i) to AH Hacienda in the original principal amount of One Million Dollars (\$1,000,000.00), bearing interest at two percent (2%) per annum (the “Original Montclair Hacienda Loan”). The Original Montclair Hacienda Loan was evidenced by a promissory note (the “Montclair Hacienda Note”); payment is secured by an instrument entitled “Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents)” dated as of December 1, 2000 by AH Hacienda (the “Montclair Hacienda Deed of Trust”). The amount of the Original Montclair Hacienda Loan was amended by Agreement No. 05-115 which increased the amount of the Original Montclair Hacienda Loan to the sum of One Million Four Hundred Thousand Dollars (\$1,400,000.00) (the “Amended Montclair Hacienda Loan”), with interest to accrue at two percent (2%) per annum and with payments to be amortized over a twenty four (24) year period (as such terms were modified, the repayment obligation as so set forth is referred to herein as the “Amended Montclair Hacienda Note”); (ii) to AH Villa in the original principal amount of Three Hundred Twenty Five Thousand Dollars (\$325,000.00), bearing interest at two percent (2%) per annum (the “Montclair Villa Montclair Loan”). The Montclair Villa Montclair Loan was evidenced by a promissory note (the “Montclair Villa Montclair Note”); payment is secured by an instrument entitled “Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents)” dated as of July 1, 1999 by AH Hacienda, which was recorded among the official records of the County Recorder of the County of San Bernardino on July 14, 1999 as Instrument No. 295365 (the “Montclair Villa Montclair Deed of Trust”); (iii) to AH Villa in the original principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00), bearing interest at two percent (2%) per annum (the “Montclair Monterey Manor Loan”). The Montclair Monterey Manor Loan was evidenced by a promissory note (the “Montclair Monterey Manor Note” which, together with the Amended Montclair Hacienda Note and the Montclair Villa Montclair Note is referred to as the “Montclair Notes”); payment is secured by an instrument entitled “Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents)” dated as of December 1, 2000 by AH Villa (the “Montclair Monterey Manor Deed of Trust” and, together with the Montclair Hacienda Deed of Trust and the Montclair Villa Montclair Deed of Trust, the “Montclair Deeds of Trust”); and

**WHEREAS**, the Former Agency as well as all redevelopment agencies in the State of California were dissolved by virtue of legislation enacted by the State of California in 2011 (by a process referred to as “Redevelopment Dissolution”). As part of Redevelopment Dissolution, the housing assets of the Former Agency were transferred to the Montclair Housing Authority, a public body, corporate and politic (the “Montclair Housing Authority”). Copies of each of the Montclair Affordable Housing Agreements, the Montclair Notes, and the Montclair Deeds of Trust are on file with the Montclair Housing Authority as a public record; and

**WHEREAS**, the amount due and payable to the Montclair Housing Authority pursuant to the Montclair Notes, as such Montclair Notes are aggregated, is \$3,160,402.14 as of March 1, 2022 (the “Base Amount,” which includes a credit for the in-lieu payments made by Owner in the sum of \$44,275), with interest continuing to accrue under the Montclair Notes in the amount of \$145.53 per day (“Per Diem Interest”) until such Montclair Notes are paid in full. The Base Amount plus the Per Diem Interest is referred to herein as the “Montclair Payment Amount”; and

**WHEREAS**, payments under the Montclair Notes are secured by the Montclair Deeds of Trust and upon payment of the Montclair Payment Amount the Montclair Housing Authority shall cause the release and/or reconveyance of the Montclair Deeds of Trust; and

**WHEREAS**, property used as security in connection with the Bonds also serves as security for the Montclair Deeds of Trust; and

**WHEREAS**, in order to satisfy the financial obligations of AH Villa and AH Hacienda under the Affordable Housing Agreements, Owner has agreed to irrevocably instruct and direct the trustee of the Bonds to pay to the Montclair Housing Authority the Montclair

Payment Amount. A condition precedent to the effectiveness of the City's approval hereunder is the repayment of the Montclair Payment Amount; and

**WHEREAS**, the Projects provide an affordable housing resource to the City and the Montclair Housing Authority and, in consideration of the previous support given to the Projects by the Former Agency as well as the cooperation of the City in approving this Resolution, Owner agrees that each Regulatory Agreement and Declaration of Restrictive Covenants in connection with the Bonds (each a "Regulatory Agreement," and collectively, the "Regulatory Agreements") shall include the provisions described in Exhibit "A" hereto, including such immaterial modifications thereto as may hereafter be approved by the Executive Director of the Montclair Housing Authority upon consultation with legal counsel (such provisions being referred to as the "Additional Regulatory Agreement Provisions"); and

**WHEREAS**, the City has determined that the operation of the Projects by the Owner shall help the City satisfy its affordable housing obligations and will lessen the burden of the City to provide affordable housing for low and very low income residents of the City including, in part, by virtue of the inclusion of the Additional Regulatory Agreement Provisions as well as by means of accomplishing the Montclair Payment Amount to the Montclair Housing Authority; and

**WHEREAS**, the Tax-Exempt Bonds will be qualified "private activity bonds" for purposes of the Internal Revenue Code of 1986 (the "Code"); and

**WHEREAS**, pursuant to Section 147(f) of the Code, the proposed issuance of private activity bonds is required to be approved by the "applicable elected representative" of the governmental units having jurisdiction over the areas in which the Projects are located, after a public hearing held after reasonable public notice; and

**WHEREAS**, the members the City Council are the applicable elected representatives of the City having jurisdiction over the area in which the Projects are located; and

**WHEREAS**, such public hearing was conducted on the date hereof by the City Council at which time an opportunity was provided to interested parties to be heard with respect to the proposed issuance of the Tax-Exempt Bonds and the Projects; and

**WHEREAS**, it is intended that this resolution, including without limitation the provisions of Section 1 below and Exhibit "A" hereto, shall constitute the approval of the proposed issuance of the Tax-Exempt Bonds required by Section 147(f) of the Code; and

**WHEREAS**, the Projects are required to be occupied in part by persons of low and very low income in accordance with California laws and the requirements of the Code; and

**WHEREAS**, this action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, pursuant to CEQA Guideline section 15378.

**NOW, THEREFORE, BE IT RESOLVED** that the Council of the City of Montclair approves as follows:

**SECTION 1.** The City Council approves the issuance of the Bonds by the Authority solely to satisfy the requirements of the Joint Powers Agreement, as the elected representatives of the governmental unit having jurisdiction over the area in which the Projects are located and approves the release and reconveyance of the Montclair Deeds of Trust by the Montclair Housing Authority; such approval is conditioned upon (i) the payment of the Montclair Payment Amount by the trustee of the Bonds concurrent with the issuance of the Bonds and (ii) inclusion within the Regulatory Agreements of the Additional Regulatory Agreement Provisions.

**SECTION 2.** The issuance and delivery of the Bonds shall be subject to the approval of and execution by the Authority of all financing documents relating thereto to which the Authority is a party and subject to the sale of the Bonds by the Authority. It is the purpose and intent of this City Council that this resolution, including without limitation the provisions of Section 1 above and Exhibit "A" hereto, constitutes approval of issuance of the Bonds for the purposes of Section 147(f) of the Code.

**SECTION 3.** Neither the City nor the Montclair Housing Authority shall have any responsibility or liability whatsoever with respect to the Bonds or the Projects. The payment of the principal, prepayment premium, if any, and purchase price of and interest on the Bonds shall be solely the responsibility of Owner. The Bonds shall not constitute a debt or obligation of the City or the Montclair Housing Authority. The adoption of this Resolution shall not obligate the City or any department thereof or the Montclair Housing Authority to (i) provide any financing to acquire or construct the Projects or to provide any refinancing of the Projects; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition or operation of the Projects; (iii) make any contribution or advance any funds whatsoever to the Authority; or (iv) take any further action with respect to the Authority or its membership therein.

**SECTION 4.** The City Manager, the City Attorney or their designees are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

**SECTION 5.** This Resolution shall take effect immediately upon its adoption.

**APPROVED AND ADOPTED** this XX day of XX, 2022.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3341 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, 2022, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk



EXHIBIT "A"

The Regulatory Agreement for each of the Projects shall contain language approved by the City Manager substantially the same as the following paragraph:

The Montclair Housing Authority is a beneficiary of the provisions of Sections 3 and 4 of this Regulatory Agreement and shall have the right to enforce the provisions of Sections 3 and 4 of this Regulatory Agreement as well as those provisions of the Affordable Housing Agreement which provide for the operation of affordable rental housing (but not those provisions therein requiring repayment of a loan); such right of enforcement shall require the prior written consent of the owners of not less than 50% of the principal amount of the outstanding Bonds and shall be subordinate to the rights of the Authority and Trustee to enforce such provisions for so long as (i) any of the Bonds remains outstanding, and (ii) any bonds which refund the Bonds ("Future Refunding Bonds") remain outstanding, provided that in connection with the issuance of Future Refunding Bonds, the period during which the affordability requirements as described in each Regulatory Agreement is extended. Whenever (i) notice is given by Authority or Trustee to Borrower under this Regulatory Agreement or (ii) notice is given by Borrower to Authority or Trustee, the party giving such notice shall concurrently give notice to the Montclair Housing Authority at the address set forth therefor in Section 21 of this Regulatory Agreement. Notwithstanding anything herein to the contrary, the Montclair Housing Authority shall have no right to enforce any provision of the Affordable Housing Agreement beyond its original term.

In Section 21 of each of the Regulatory Agreements, an address shall be given for notice to the Montclair Housing Authority.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	L. LEW/V. FLORES
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

**BACKGROUND:** Mayor Pro Tem Ruh has examined the Warrant Register dated April 4, 2022, and the Payroll Documentation dated March 13, 2022, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated April 4, 2022, totals \$1,148,842.63.

The Payroll Documentation dated March 13, 2022 totals \$671,955.22 gross, with \$466,820.22 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

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	PRK660
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. HEREDIA

**SUBJECT:** CONSIDER APPROVAL OF THE SUNSET PARK BEAUTIFICATION PROJECT ASSOCIATED WITH THE GRANT AWARD FROM THE CLEAN CALIFORNIA LOCAL GRANT PROGRAM

CONSIDER AUTHORIZING THE FILING OF A CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION FOR THE SUNSET PARK BEAUTIFICATION PROJECT

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**REASON FOR CONSIDERATION:** City Council approval is required for public park improvements. The City Council is requested to consider approving the Sunset Park Beautification Project associated with the grant award from the Clean California Local Grant (CCLG) Program and authorize the filing of a California Environmental Quality Act (CEQA) notice of exemption for the proposed project.

**BACKGROUND:** On January 31, 2022, staff applied to the Clean California Local Grant (CCLG) Program sponsored by the California Department of Transportation (Caltrans). The CCLG Program has nearly \$300 million in funds available to local and regional public agencies, transit agencies, tribal governments, and nonprofits to clean and beautify public spaces, including local streets and roads, tribal lands, parks, pathways, and transit centers. The types of projects funded by this program include a wide range of community enhancements such as litter removal, landscaping, art installations, walking and bike paths, and other complete streets features that enhance safety and provide access to transportation.

The Montclair project team successfully obtained an award of \$4,174,097 for needed enhancements to Sunset Park that include improvements to an existing walking trail along the park's west boundary (see maps attached to report). The walkway adjacent to the park is part of the City's proposed San Antonio Creek Trail Project currently in the final stages of preliminary design. Ultimately, the San Antonio Creek Trail will provide a continuous multi-use greenway path running north to south for approximately three miles beginning at the Pacific Electric Trail near Monte Vista Avenue on the north and ending at Mission Boulevard on the south. The trail improvements for the segment at Sunset Park would be the first of such improvements envisioned for the San Antonio Creek Trail. Montclair and San Bernardino are the only two cities in San Bernardino County to receive a CCLG award. Grant recipients must complete their projects by June 30, 2024.

The Sunset Park Beautification Project (Project) includes improvements that will enhance the existing park site, increase amenities and access, and provide substantial benefits to the disadvantaged communities that surround the park. The Project focuses on improvements on the south side of the park, which lacks a sufficient number of trees or amenities. The Project will transform uninviting and underused parkland area into a green and more inviting environment with multiple recreation and walking/biking amenities. The surrounding communities can gather for play, exercise, and family events such as birthday parties and reunions.

The scope of the Project includes:

- An improved walking and biking trail along the western boundary of the site in conformance with the proposed San Antonio Creek Trail Project.
- New exercise stations along the walking trail.
- Parking lot improvements, including new permeable pavement, striping, and signs.
- Added ADA accessible pedestrian walkways within the park.
- New restroom building to replace existing structure.
- New play equipment, concrete benches, and shade structures with picnic tables.
- Added trees, new drought-tolerant landscaping, and water-efficient irrigation.
- New lighting equipment to replace and enhance existing equipment and fixtures.

The project qualifies for a CEQA Exemption pursuant to Section 15301 (Existing Facilities), and Section 15311 (Accessory Structures).

**FISCAL IMPACT:** The filing fee for the CEQA Notice of Exemption is \$50, paid from the General Fund. The Project is anticipated to be completely funded by the \$4,174,097 grant award received by the City from the CCLG Program.

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

1. Approve the Sunset Park Beautification Project associated with the grant award from the CCLG Program; and
2. Authorize staff to file a CEQA Notice of Exemption for the Sunset Park Beautification Project.

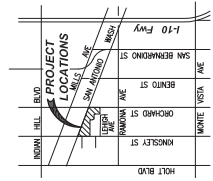
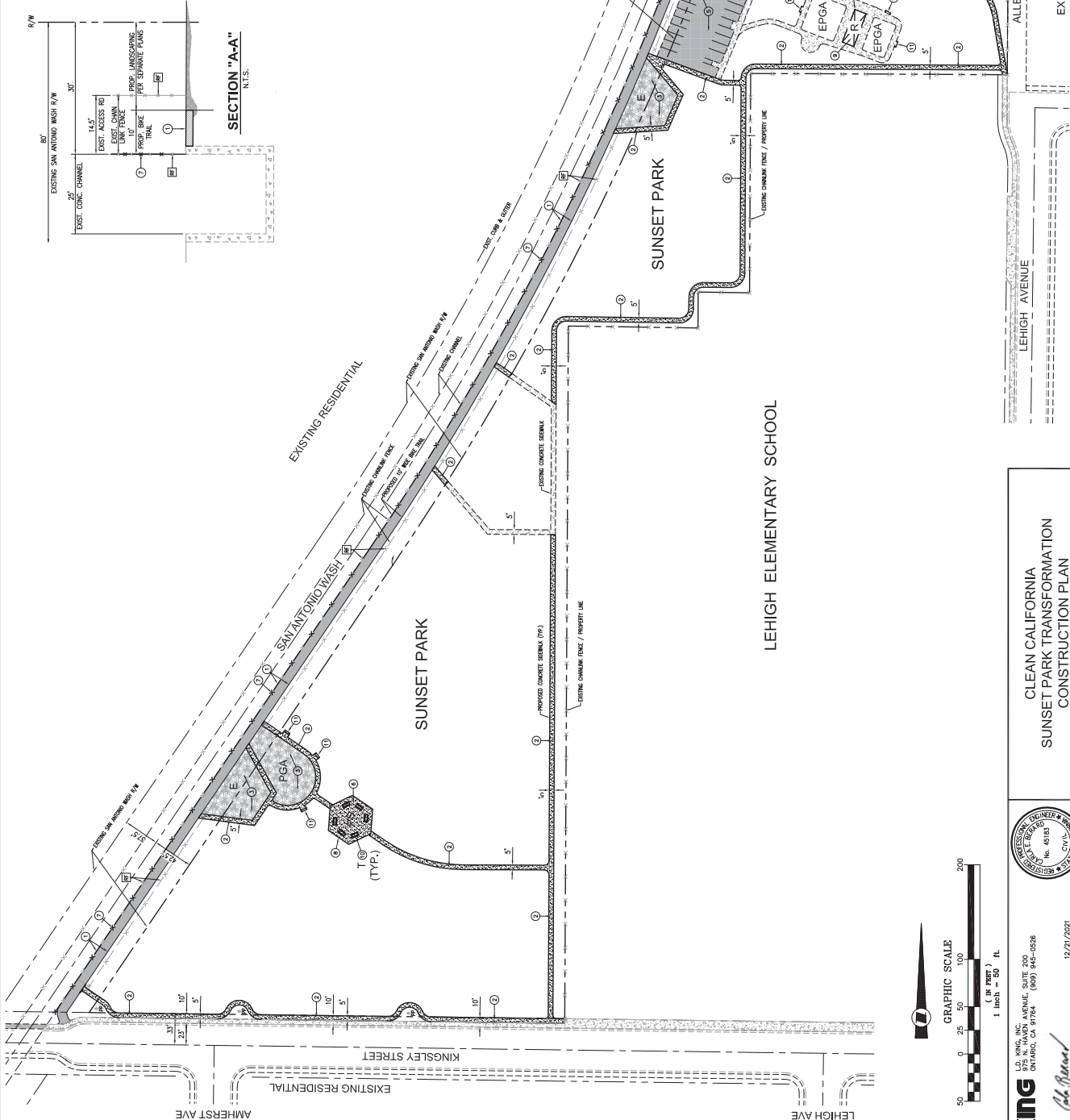
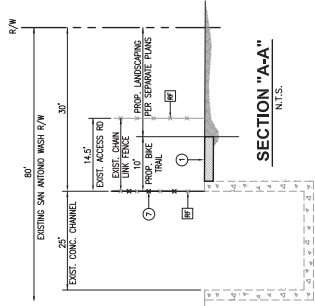
**CONSTRUCTION NOTES**      **ESTIMATED QUANTITIES**

- ① - 1" MINIMUM THICKNESS COMPACTED MINERAL FILL THICKNESS SHALL BE DETERMINED BY FIELD SOIL TESTS.      16,800 SF
- ② - CONCRETE 5" THICK, 4" PCC SUBGRADE PER SPWIC STD. 102-1.      8,800 SF
- ③ - INSTALL UNREINFORCED SURFACING PER MANUFACTURER'S SPECIFICATIONS, OVER SURFACE DETERMINED BY SOILS ENGINEER, MAKE AND COLOR TO BE DETERMINED BY CITY. PERMEABLE CONCRETE.      8,800 SF
- ④ - CONCRETE CONCRETE SET WALL WITH NO BACK SUPPORT.      271 LF
- ⑤ - CONCRETE FORMABLE FINISHMENT.      16,800 SF
- ⑥ - CONSTRUCT 4" THICK CONCRETE PAD WITH 4" X 4" WELDED WIRE MESH.      1,604 LF
- ⑦ - INSTALL 4" HIGH CHAIN LINK FENCE.      1,604 LF
- ⑧ - CONSTRUCT 4" THICK CONCRETE PAD WITH 4" X 4" WELDED WIRE MESH PER MANUFACTURER'S SPECIFICATIONS.      1 EA
- ⑨ - CONSTRUCT 4" THICK CONCRETE PAD WITH 4" X 4" WELDED WIRE MESH PER MANUFACTURER'S SPECIFICATIONS.      1 EA
- ⑩ - INSTALL CHAIN LINK FENCE AND MESH TO BE DETERMINED BY CITY. PROVIDE FASTENERS.      6 EA
- ⑪ - INSTALL CONCRETE BACK LESS BENCH.      7 EA

**ABBREVIATIONS / LEGEND**

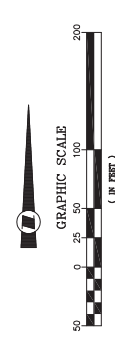
- DISPOSITION NOTES**
- ① - REMOVE AND DISPOSE EXISTING CHAIN LINK FENCE
  - ② - REMOVE AND DISPOSE EXISTING ASPHALT CONCRETE
  - ③ - EXISTING RESTROOM BUILDING TO BE DEMOLISHED
- NOTES:**
1. ALL DIMENSIONS UNLESS OTHERWISE INDICATED
  2. ALL DIMENSIONS FOR FINISH GRADE
- ABBREVIATIONS / LEGEND**
- AB - PROPOSED UNREINFORCED CONCRETE BENCHING
  - E - PROPOSED EXISTING STATION
  - EA - EXISTING ASPHALT
  - R - EXISTING RESTROOMS
  - PGA - PROPOSED PLAY EQUIPMENT AREA
  - EPGA - EXISTING PLAY EQUIPMENT AREA
  - PS - PROPOSED SHADE AREA
  - T - PROPOSED FENCE TABLE WITH BENCHES
  - X - PROPOSED CHAIN LINK FENCE
  - ⊕ - EXISTING POWER POLE
  - ⊖ - PROPOSED FENCE TABLE WITH BENCHES
  - ⊙ - PROPOSED AC PAVEMENT
  - ▨ - PROPOSED UNREINFORCED SURFACE
  - ▩ - PROPOSED FORMABLE SURFACE
  - ▧ - PROPOSED CONCRETE
  - ▦ - EXISTING CONCRETE
  - ▤ - PROPOSED CONCRETE BACK LESS BENCH
- SHEET INDEX:**
1. CONSTRUCTION PLAN
  2. SITE PLAN

**SECTION "A-A"**  
N.T.S.



**VICINITY MAP**  
N.T.S.

**SHEET 1 OF 2**



**LDXING**  
L.D. KING, INC.  
875 N. HAVEN AVENUE, SUITE 200  
ONTARIO, CA 91764 (951) 840-0528

**Clean California**  
SUNSET PARK TRANSFORMATION  
CONSTRUCTION PLAN  
ORCHARD STREET, MONTCLAIR, CALIFORNIA

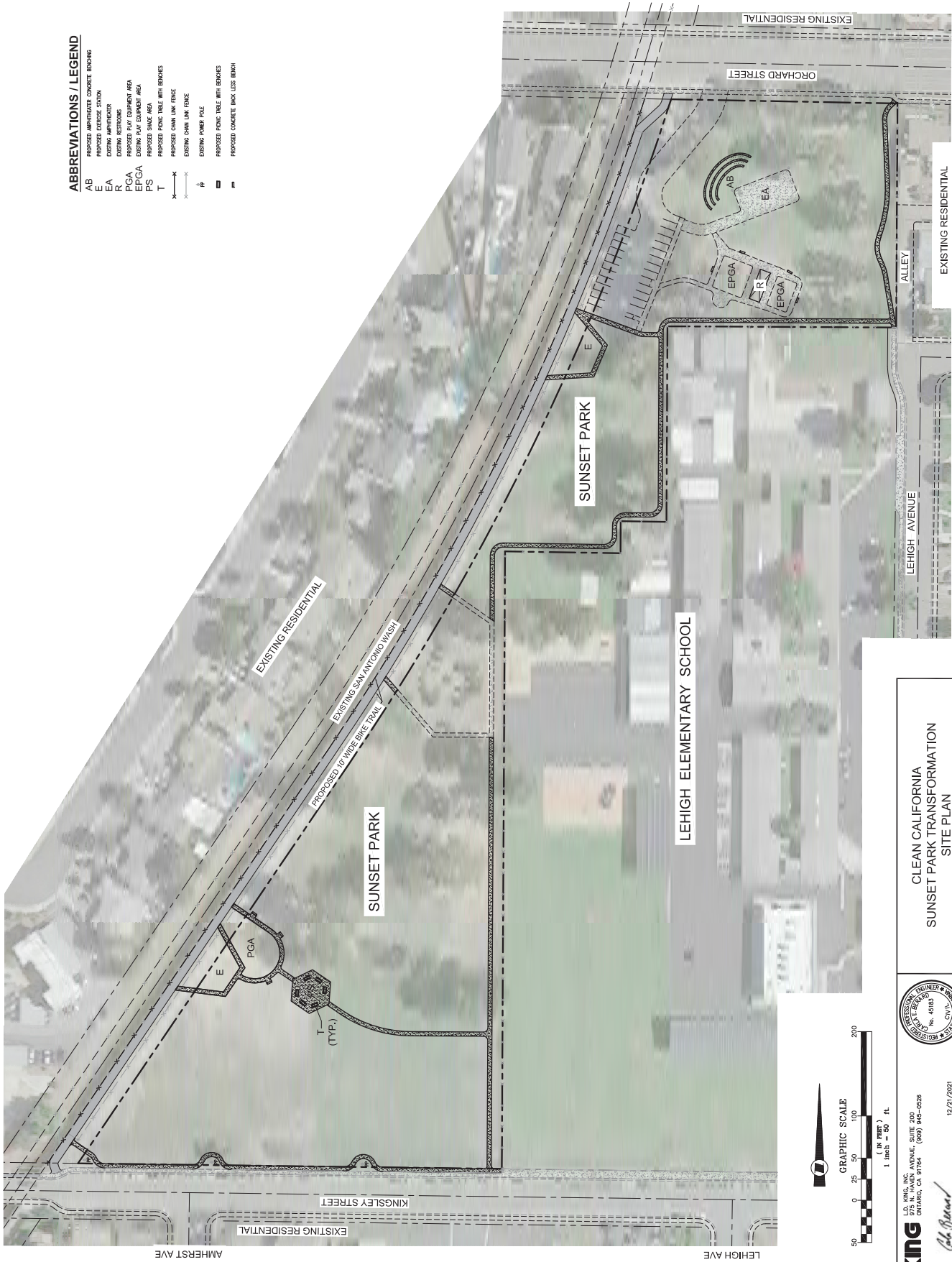
**Professional Engineer Seal:**  
L.D. KING, INC.  
No. 45193  
CIVIL  
EXPIRES 12/31/2024

DATE: 12/21/2021  
R.C.E. No. 45193

Carla E. Berman  
CARLA E. BERMAN

**ABBREVIATIONS / LEGEND**

- AB PROPOSED AMPHIPHILIC CONCRETE BENCHING
- E PROPOSED EXERCISE STATION
- EA EXISTING AMPHIPHILIC
- R EXISTING RESTROOMS
- PGA PROPOSED PLAY EQUIPMENT AREA
- EPGA EXISTING PLAY EQUIPMENT AREA
- FS PROPOSED FENCIBLE SIDE WITH BENCHES
- T PROPOSED TRAIL
- PROPOSED CHAIN LINK FENCE
- EXISTING CHAIN LINK FENCE
- EXISTING POWER POLE
- PROPOSED FENCIBLE TABLE WITH BENCHES
- PROPOSED CONCRETE BACK LESS BENCH



**CLEAN CALIFORNIA  
SUNSET PARK TRANSFORMATION  
SITE PLAN**

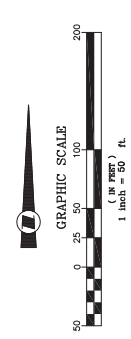
ORCHARD STREET, MONTCLAIR, CALIFORNIA

**LDXING**  
L.D. KING, INC.  
875 N. HAVEN AVENUE, SUITE 200  
SUNCLIFF, CA 95068  
(925) 840-0528

*Carla E. Berman*  
CARLA E. BERMAN  
R.C.E. No. 45183

REGISTERED PROFESSIONAL ENGINEER & ARCHITECT  
No. 45183  
CIVIL  
EXPIRES 12/31/2024

12/21/2021 DATE



Last Opened: Dec 21, 2021 - 11:30am E:\100-199\100-Montclair\SUNSET PARK\Master\PLANS\100-Montclair-Sunset-Plan-02.dwg; By: Joneer

**Notice Of Exemption**

**California State Clearinghouse Handbook Form D**

TO: ( X ) Office of Planning and Research  
P.O. Box 3044  
1400 Tenth Street, Room 222  
Sacramento, CA 95812-3044

FROM: City of Montclair  
Public Works Department  
5111 Benito Street  
P.O. Box 2308  
Montclair, CA 91763-0808

( X ) County Clerk  
County of San Bernardino  
385 N. Arrowhead Avenue  
San Bernardino, CA 92415

**Project Title:** Sunset Park Beautification Project

**Project Location – Specific:**

The project area is located between Orchard Street and Kingsley Street east of the San Antonio Creek Channel in the City of Montclair in San Bernardino County, California.

**Description of Project:**

This project will renovate the existing park amenities by replacing the existing restroom building, parking lot, play equipment, trees, lighting, landscaping and irrigation as well as constructing new shade structures, exercise station trail, benches, and picnic tables.

**Name of Public Agency Approving Project:** City of Montclair

**Name of Person or Agency Carrying Out Project:** Monica Heredia, City Engineer

**Exempt Status: (check one)**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a);
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c);
- Categorical Exemption. Section 103, Class 1: Existing Facilities
- Statutory Exemptions. State the code number: \_\_\_\_\_

**Reasons why project is exempt:**

The existing amenities at the park will be replaced with new facilities and enhancements to the park.

**Lead Agency**

**Contact Person:** Monica Heredia

**Telephone:** 909-625-9441

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project?  Yes  No

\_\_\_\_\_  
 (Signature) Date: \_\_\_\_\_ Title: City Engineer  
 Monica Heredia, Public Works Department, City of Montclair

Signed by Lead Agency

Date received for filing at OPR: \_\_\_\_\_

Signed by Applicant





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	FIN100/130
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE/SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING ANNUAL INDEPENDENT AUDIT REPORTS FOR THE CITY OF MONTCLAIR AND THE SUCCESSOR AGENCY TO THE MONTCLAIR REDEVELOPMENT AGENCY AND THE ANNUAL MEASURE I COMPLIANCE AUDIT		

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**REASON FOR CONSIDERATION:** Though not required by law, in order to provide more transparency and documentation, the City Council and Successor Agency Board of Directors are requested to receive and file the annual reports prepared by the City's independent auditing firm and a compliance audit required by Measure I.

**BACKGROUND:** The City of Montclair has engaged the auditing firm of Van Lant & Fankhanel, LLP, Certified Public Accountants (City Auditors) to perform independent audit of its financial transaction and to conduct other reviews required by law. Attached for City Council's information are copies of the reports issued by this firm, which are discussed in detail below.

The results of these engagements and the reports associated with them are as follows:

- Financial audit of the City of Montclair for the fiscal year ended June 30, 2021, which contains financial statements covering City operations. The financial statements presented in this report received an unqualified opinion from the auditing firm.
- Audit Communication Regarding Conduct of Audit — This letter provides information on the conduct of the audit. The auditors indicated:
  - All significant transactions have been recognized in the financial statements in the proper period.
  - They encountered no significant difficulties in dealing with management in performing and completing their audit.
  - Any misstatements noted were corrected by management.
  - No disagreements with management arose during the course of the audit.
- Report on Internal Control over Financial Reporting and on Compliance and Other Matters. This report covers deficiencies and weaknesses in internal control that could cause material misstatements. No deficiencies were noted by the auditors.
- Report on Agreed-Upon Procedures Applied to Appropriation Limit Worksheets. This is a set of procedures performed on the City's Gann Appropriation Limit as required by State Law. No findings were noted in the performance of these procedures.



- **Successor Agency – Bonding Requirement Financial Disclosure Financial Statements** — This is a special purpose audit covering only those operations of the Successor Agency (prior redevelopment agency) that affect bond issues. Prior to the elimination of redevelopment, there was a separate financial audit performed and that was required as part of our continuing disclosure requirement for those bond issues. That audit was eliminated in the dissolution process and the Successor Agency now prepares this special report to comply with those disclosure requirements. This report gives the bond community specific information on the transactions associated with those bonds. To the best of staff’s knowledge, we are the only successor agency that prepares this type of disclosure. For the fiscal year ended June 30, 2021, all of the continuing disclosure reporting requirements were completed within the prescribed time limits.
- **Single Audit Report on Federal Awards Programs** — This is an organization-wide financial statement and federal awards’ audit of a non-federal entity that expends \$750,000 or more in federal funds in one year. The Single Audit Report provides assurance to the Federal Government that a non-federal entity has adequate internal controls in place and is generally in compliance with program requirements. The City has not been required to complete a Single Audit since Fiscal Year 2015-16 due to our expenditures not exceeding the \$750,000 threshold.

The financial audits of the City, the special audit of the Successor Agency, and the Single Audit were completed in early 2022. No management comments have been made by the City Auditors to the City indicating any policies and/or procedures that they would like to see improved.

Additionally, as required by Measure I, independent auditors are engaged by the San Bernardino County Transportation Authority to annually perform a financial and compliance audit of the City of Montclair’s Measure I fund. This audit is to include a computation of Maintenance of Effort. For Fiscal Year 2020-2021 this audit was performed by Eide Bailly LLP, Certified Public Accountants, and their report is attached. The Measure I Fund received an unqualified financial statement opinion and no noncompliance was noted. The Maintenance of Effort computation, which compares general city street and highway expenditures against an annual base requirement, indicated that the City of Montclair has exceeded its cumulative Maintenance of Effort requirement by \$16,390,308.

**FISCAL IMPACT:** There is no fiscal impact in receiving and filing the reports provided by the City and Measure I Auditors.

**RECOMMENDATION:** Staff recommends that the City Council and Successor Agency Board of Directors receive and file annual independent audit reports for the City of Montclair and Successor Agency to the Montclair Redevelopment Agency and the annual Measure I Compliance Audit.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	MCF175/MCF200
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	HUMAN SVCS./MCF
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	A.COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF THE PURCHASE OF ITEMS FOR THE 2022 MONTCLAIR TO COLLEGE GRADUATION CEREMONY		

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**REASON FOR CONSIDERATION:** The Montclair Community Foundation (MCF) Board of Directors is requested to consider approval of the purchase of items for the 2022 Montclair to College Graduation Ceremony.

**BACKGROUND:** The Montclair City Council serves as the MCF Board of Directors. The vision of MCF is to work collectively and 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.

MCF adheres to the City of Montclair's purchasing policies. According to the City's purchasing manual, major purchases over \$1,000 require governing board approval.

Staff is requesting approval by the MCF Board for the purchase of items related to the Montclair to College Graduation event not to exceed \$15,000. If the costs are approved, the 2022 Montclair to College Graduation will be held on April 27, 2022, at the Canyon at Montclair Place. Items related to graduation include the cost of dinner at the event location for graduates and guests, decorations, and advertising.

**FISCAL IMPACT:** Should the MCF Board approve the purchase of items related to Montclair to College Graduation, costs will not exceed \$15,000 from grant funds and donations.

**RECOMMENDATION:** Staff recommends the Montclair Community Foundation Board approve the purchase of items for the 2022 Montclair to College Graduation.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	GRT125
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	HUMAN SVCS.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 22-22 WITH BLAIS & ASSOCIATES, INC. FOR GRANT WRITING SERVICES		

CONSIDER AUTHORIZING A \$50,000 APPROPRIATION FROM THE CONTINGENCY RESERVE FUND FOR COSTS RELATED TO AGREEMENT NO. 22-22

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-22 with Blais & Associates, Inc. (Blais) for grant writing services, and authorizing a \$50,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 22-22.

A copy of proposed Agreement No. 22-22 with Blais is attached for City Council review.

**BACKGROUND:** In March 2019, the City of Montclair began utilizing Blais for grant writing services. The City has seen much success in working with Blais, with two major grant awards that will transform the City; the City has successfully applied for and obtained a \$5.1 million grant for the development of Reeder Ranch Park, and a \$4.7 million grant for major improvements at Sunset Park. In total, the City of Montclair has applied for seven grants utilizing Blais services. The return on investment to the City was \$110 in funding received for every dollar spent.

The City would like to continue to pursue grant funding when possible to address a variety of needs in the community. There are current funding announcements that staff would like to pursue, along with announcements of future opportunities. Each of these funding opportunities requires an extraordinary amount of time and specific expertise.

Although there are no guarantees stipulated in the agreement for future expenditures or awards, it is anticipated that aggregate expenses for future services through Agreement No. 22-22 will be approximately \$50,000. The service provided by Blais over the past three years has been outstanding. Before the execution of the original agreement with Blais, City staff went through a vetting process to make sure that Blais was the best value for the City. Therefore, proposals from other firms were not sought and Blais continues to be the best value for the City. Staff believes it is in the best interest for the City to continue utilizing Blais to provide grant writing services.

**FISCAL IMPACT:** Staff estimates preparing future grant applications will cost approximately \$50,000. It is recommended that the Contingency Reserve Fund be utilized to fund the grant writing services from April 4, 2022, through June 30, 2023.

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

1. Approve Agreement No. 22-22 with Blais & Associates, Inc. for grant writing services.
2. Authorize a \$50,000 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 22-22.

**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**GRANT WRITING**

THIS AGREEMENT is made and effective as of April 4, 2022, between the City of Montclair, a municipal corporation ("City") and Blais & Associates, Inc. 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 April 4, 2022 and shall remain and continue in effect for a period of 18 months until tasks described herein are completed, but in no event later than June 30, 2023, 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

\$50,000 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, but in no event shall total compensation exceed Ten Thousand Dollars (\$10,000.00). 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 6(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:	Alyssa Colunga Senior Management Analyst City of Montclair 5111 Benito Montclair, CA 91763
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To Consultant: Neil Blais  
 President & CEO  
 Blais & Associates, Inc.  
 4017 Moonlight Drive  
 Little Elm, TX 75068

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 "D" 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 WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF MONTCLAIR**

**Blais & Associates, Inc.**

By: \_\_\_\_\_  
Javier John Dutrey, Mayor

By: \_\_\_\_\_  
Neil Blais, President & CEO

Attest:

By: \_\_\_\_\_  
Andrea Myrick, City Clerk

By: \_\_\_\_\_  
Founder

Approved as to Form:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Diane E. Robbins, City Attorney

Date: \_\_\_\_\_

**EXHIBIT A**

**Grant Monitoring/Fact Sheet Distribution/Monthly Grant Call.** B&A will provide monitoring services for all applicable federal, state, regional, and non-profit (project specific) grant funding opportunities and we will alert staff when an announcement is released. This effort includes notification of open grant solicitations utilizing Fact Sheets, coordination with City staff regarding the “go” or “no-go” decision, keeping the Needs Assessment current, and responding to questions from staff. B&A will maintain a Grant Activity Report (GAR) and will provide monthly grant coordination conference calls. The GAR allows you to keep the City Council apprised of grant activities and ensures that everyone is aware of the cost and benefit of the program. Because all of B&A’s full service clients benefit from the research effort, the cost is pro-rated over all of our clients, meaning the City of Montclair gets the benefit at a significantly reduced cost.

**Grant Writing (Task Order Basis).** Providing a budget estimate for grant writing is difficult because it depends on the availability of grant programs open each year, the status and availability of competitive projects, and how the projects will compete within the scoring criteria set by the funding agencies. However, B&A has extensive experience with cities of similar size and has learned through the years the approximate average number of grants most cities will apply for in any given year. This budget is for discussion and planning purposes and B&A will provide not-to-exceed quotes for each grant application the City is interested in pursuing. Once the quote has been approved, B&A will follow our standard process. This includes developing a Checklist and Timeline outlining the roles and responsibilities for each party, turnkey narrative development, scope of work, schedule, budget, maps, figures, visuals, and support letters, etc. B&A will develop an 80% draft application for technical review (scope of work, budget, and other key information). B&A will adjust the application based on the City’s review of the 80% draft and will bring the application to 100% final. City staff will review the final draft, provide feedback, and provide approval to submit. B&A submits all applications, on-time, and in accordance with the program guidelines on behalf of each client.

Based on our experience with cities of similar size, development, and services, we anticipate that the City of Montclair may pursue approximately four (4) grant applications averaging 75 hours or \$7,875 per application. In FY 2019-2020 Montclair pursued two grant applications.

**Grant Management (Task Order Basis).** B&A can assist with post-award grant management including all reporting and close-out efforts. This effort includes working with the City reviewing the grant agreement, developing a master Tracking Table, which documents grant reporting requirements, a schedule for request for reimbursements (or drawdown requests), project reporting requirements, and project close-out, to name a few. B&A will provide the City with an Audit Binder (electronic or hard copy as requested) containing all information needed for the audit process. Grant management is quoted for each assignment, very similar to the quoting process for grant writing, due to the wide variety in reporting requirements among grant programs.

The cost to manage grant and loan programs can vary significantly. For purposes of this proposal, B&A calculated the average cost to manage the nearly 80 grant programs in our current “grant management” portfolio. Many of the grant management assignments are multi-year projects requiring requests for reimbursements and quarterly progress reports for the duration of the performance period and the average annual cost is approximately \$15,000.

NOTE: As discussed in the meeting, post-award administration costs can sometimes be built into the grant proposal so the grant award pays for the cost of administering the program, or the City may use the post-award administrative costs as part of the local match, thereby spreading the costs over the period of performance for the awarded grant. A combination of the two approaches may reduce the fiscal impact to the City.

**EXHIBIT B**



**Standard Fee Schedule – Calendar Year 2022**

Description	Fee
Professional Services	Fixed Fee
External Consultants (e.g., BCA analysis)	Cost – no markup
Mileage	Prevailing standard IRS rate
Travel (tolls, taxi, airfare, hotel)	Cost – no markup
Printing, Copying, Binding, etc.	Cost – no markup
Shipping, Express Mail, or Courier	Cost – no markup

Blais & Associates (B&A) performs work on a fixed fee basis. Each project is independently and carefully analyzed to determine a projected Scope of Work. B&A then provides a Fixed Fee quote for client review and approval prior to beginning work. Any additional one-off requests or activities that fall outside of the Scope of Work are performed and billed at one unified All Staff billing rate of \$115 per hour. This streamlined approach enables B&A to serve as a good steward of the City’s capital resources and be the most efficient and effective grant services provider possible. B&A reserves the right to adjust rates annually to align with the cost of doing business. All external consultant fees and direct out-of-pocket direct expenses are billed at cost (no markup).

Our proposed rates shall remain firm for a period of 90 calendar days from the date of submission of this fee schedule. Invoices are provided monthly, payable within 30 days after receipt.

B&A actively integrates the following “cost saving” practices into its operational procedures:

- All out-of-pocket expenses are billed at cost, with zero markup to our clients.
- B&A utilizes company discounted commercially available printing services (e.g., Staples), as needed, for bulk printing, copying, and binding support, which significantly reduces required direct costs.
- B&A utilizes company discounted commercially available shipping and delivery services (e.g., FedEx, UPS, or USPS), as needed, for delivery of hard copy materials, which significantly reduces required direct costs.
- B&A provides clear itemized invoices and can, at your request, provide receipts for all direct expenses.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	HSV042/MCF150
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	MCF/HUMAN SVCS.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	A. COLUNGA
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 22-23 WITH CITY OF HOPE TO ACCEPT FUNDING FOR COMMUNITY HEALTH PROGRAMS THROUGH THE HEALTHY MONTCLAIR INITIATIVE		

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**REASON FOR CONSIDERATION:** The Montclair Community Foundation Board of Directors is requested to consider Agreement No. 22-23 with City of Hope to accept funding to support community health programs through the Healthy Montclair Initiative.

**BACKGROUND:** The purpose of the Healthy Montclair Initiative is to achieve excellence in quality of life for those who live, work, play, eat and shop in Montclair. Montclair was one of the first cities in California to be designated a Healthy City by California Healthy Cities and Communities in 1998. Since this time, the Healthy Montclair Initiative has flourished. Healthy Montclair defines health as a state of complete physical, mental, and social wellbeing and not merely the absence of disease or infirmity.

Cardiovascular diseases, cancers, and chronic lower respiratory diseases caused over 69 percent of the deaths in Montclair over the past thirty years. The Human Services Department has strategically identified policies, strategies, and programs to transform our community's health and quality of life. Among the efforts of the Human Services Department was the Social Determinants of Health Pilot Program, funded in part through a City of Hope Healthy Living Grant in 2018. Montclair was also selected by City of Hope in 2019 as one of eight agencies to promote evidence-based health education developed through the Partners in Care Foundation's Chronic Disease Self-Management Education Program (CDSMP) utilized by the Centers for Disease Control and Prevention (CDC).

The term of this agreement is through December 31, 2021, to fulfill services completed by the Montclair Community Foundation in 2021 and to fulfill the requirements of City of Hope's funding source. The Montclair Community Foundation will continue this partnership with City of Hope by offering community health education and assisting in program strategy and evaluation.

**FISCAL IMPACT:** Should the City Council approve Agreement No. 22-23, City of Hope would pay the Montclair Community Foundation an amount not to exceed \$10,000.

**RECOMMENDATION:** Staff recommends the Montclair Community Foundation Board of Directors approve Agreement No. 22-23 with City of Hope to accept funding for community health programs through the Healthy Montclair Initiative.

### CONSULTANT AGREEMENT (RESEARCH)

This Agreement (“Agreement”) is made between Beckman Research Institute of the City of Hope (“City of Hope”) and Montclair Community Foundation (“you,” “your” or “Consultant”) (collectively the “parties,” “we” or “us”), and is effective as of November 1, 2021 (the “Effective Date”).

#### 1. Scope of Work:

(a) You agree to provide to City of Hope the services listed in Exhibit 1 in the manner specified in Exhibit 1 or otherwise specified by City of Hope and such other related services as are requested by City of Hope from time to time as instructed by City of Hope (all of the foregoing, the “Services”). You also agree to provide written reports or other deliverables to City of Hope as described in Exhibit 1 (“Deliverables”) or otherwise specified by City of Hope, on the delivery schedule provided by City of Hope.

(b) You agree to keep and promptly submit to City of Hope upon City of Hope’s request accurate records of all Services performed, including without limitation a record of the hours required to perform the Services.

#### 2. Compensation:

(a) You will be compensated at the rate of \$100 per normal working hour. In no event, however, will the total amount of compensation for Services or travel paid to you by City of Hope under this Section during the Term (defined below) exceed \$10,000 for the Term. You agree to keep complete, accurate and itemized records of all hours for which you are to be compensated under this Agreement and City of Hope will have no obligation to compensate you to the extent you do not do so. You are solely responsible for withholding and paying, and will withhold and pay, all federal, state, and local taxes, social security payments, and any other taxes or payments which may be due incident to payments made by City of Hope for Services rendered under this Agreement.

(b) City of Hope will reimburse you for the following reasonable out-of-pocket expenses to the extent that such expenses are necessary and directly attributable to the Services performed under this Agreement: (i) travel expenses which have been pre-approved in writing by City of Hope, including economy airfare, rental vehicles (provided that the cost comparison with other available ground transportation is favorable in City of Hope’s determination), business class hotels, meal per diem (\$75 maximum per day) and highway mileage in personal vehicles at \$0.485 cents per mile; and (ii) other reasonable expenses, such as long distance telephone and postage, which have been pre-approved in writing by City of Hope. You agree to keep complete, accurate and itemized records of all expenses for which you are to be reimbursed under this Agreement and submit all such expenses to City of Hope for reimbursement within sixty (60) days after they are incurred and City of Hope will have no obligation to reimburse you to the extent you do not do all of the foregoing. Expenses submitted after this time will not be reimbursed.

(c) Promptly after the end of each calendar month, you agree to submit an itemized monthly invoice for your Services for that month and for any reimbursable expenses incurred during that billing period. You agree to provide along with such invoice sufficient documentation of the Services you rendered and original receipts for any reimbursable expenses as well as any other records or other information reasonably requested by City of Hope. City of Hope will pay each properly submitted and documented invoice within **thirty (30) days** of receipt

3. Term: This Agreement will be effective, starting on the Effective Date, for a term (“Term”) ending on December 31, 2021 or unless otherwise terminated earlier. Any extension of the Term must be in writing and signed by both you and City of Hope.

#### 4. Termination:

(a) Either you or City of Hope may terminate this Agreement at any time, for any or no reason, by giving thirty (30) days written notice of termination. City of Hope shall have the right to terminate this Agreement immediately upon written notice to Consultant in the event that the performance by either party of any term, covenant, condition or provision of this Agreement shall jeopardize City of Hope’s: (i) licensure, (ii) participation in Medi-Cal, Medicare, or other government or commercial health care reimbursement or payor programs, (iii) full accreditation by The Joint Commission, or any other state or nationally recognized accreditation organization, (iv) tax-exempt status, or (v) bond financing.

(b) If this Agreement is terminated for any reason, you agree to immediately discontinue your Services and promptly deliver to City of Hope or destroy (at City of Hope’s sole option) all copies of City of Hope confidential and/or proprietary information and all Materials and Work Product (each defined below) in your control, in any manner directed by City of Hope. Unless City of Hope terminates this Agreement for material breach by you, City of Hope will pay you as provided under this Agreement for any outstanding valid and unpaid invoices and any Services actually performed and any reimbursable expenses actually incurred in the

month in which termination occurs but for which you have not already been paid, and you agree that any such payment shall be in full satisfaction of any obligation or liability of City of Hope to you under this Agreement.

(c) The provisions that contemplate performance or obligations subsequent to termination or expiration of this Agreement will survive expiration or termination of this Agreement.

5. Confidentiality:

(a) You agree and understand that certain confidential and/or proprietary information (“Confidential Information”) of City of Hope may be disclosed to you in connection with this Agreement. Confidential Information is all City of Hope information and material that is either marked or identified by City of Hope as confidential or proprietary, or provided to you under circumstances indicating it is confidential or proprietary. Confidential Information includes (but is not limited to) patient or personnel information, business or financial information, trade secrets, inventions, and technical, engineering, or product information. Confidential Information does not include information that (a) is or becomes publicly known through no act or omission by you; (b) was rightfully known by you without confidential or proprietary restriction before disclosure from City of Hope; or (c) is independently developed by you without the use or reference to any Confidential Information. You may disclose Confidential Information only to the extent (i) approved in writing in advance by City of Hope or (ii) you are legally compelled to disclose such Confidential Information. However, if you believe disclosure is required by law, you agree to notify City of Hope immediately upon receiving a request or demand for such disclosure and to cooperate with City of Hope and take all reasonable efforts to delay disclosure until after City of Hope has had an opportunity to respond to such request or demand.

(b) You agree and understand that all Confidential Information is and shall continue to be exclusively the property of City of Hope or its affiliates. You will acquire no right or interest in any Confidential Information because of this Agreement, except for the limited right to use such Confidential Information according to the express terms of this Agreement.

(c) You agree to maintain all Confidential Information in strict confidence and will not disclose, directly or indirectly, any Confidential Information to any third party. You will disclose the Confidential Information only to your employees (if any) who have a need to know such information and who are bound in writing by restrictions regarding disclosure and use no less restrictive than the terms of this Agreement. You will use the Confidential Information solely for the purpose of performing the Services and not for your own benefit and accounting, or that of a third party. At the request of City of Hope, you will immediately destroy or deliver to City of Hope (at City of Hope’s sole option) all copies of Confidential Information in your possession or control. . You agree that if you (or your employees or agents) breach or threaten to breach this Section 5, City of Hope will have the right to equitable relief, including injunctive relief, against your breach or threatened breach, without the necessity of posting any bond or other security, in addition to any other remedies available to City of Hope under this Agreement or any applicable law. You also agree and understand that, if City of Hope determines that you have access to patient health information, you will sign City of Hope’s then standard “Business Associate Addendum” under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). You understand and agree that any breach by you of the Business Associate Addendum will be grounds for immediate termination of this Agreement.

6. Independent Contractor: You and City of Hope intend and agree that you are an independent contractor and you will not be deemed an employee of City of Hope, nor will this Agreement create any partnership, joint venture or fiduciary relationship between us. You and your employees, contractors and agents will not claim or be entitled to any benefits accorded to City of Hope’s employees, including without limitation health insurance, worker’s compensation, disability insurance, vacation or sick pay. You are solely responsible for paying all ordinary, necessary and other expenses of your employees, contractors and agents in connection with this Agreement and all disability, workers’ compensation or other insurance, as well as any licenses and permits usual or necessary for performing the Services. You understand and agree that you are not an agent of City of Hope and that you have no authority to enter into contracts or incur expenses on behalf of City of Hope, or otherwise bind or make representations on behalf of City of Hope in any way.

You agree that although City of Hope may not be your exclusive client, you will not establish any new consulting or employment relationships that might result in the disclosure of Confidential Information or otherwise conflict directly or indirectly with your obligations under this Agreement. If you intend to establish any additional consulting relationships during the Term that might reasonably result in the disclosure of City of Hope’s Confidential Information, then you agree to notify City of Hope and to disclose to City of Hope in advance the nature of the other consulting or employment relationship. If after discussions between the parties, City of Hope reasonably determines that the new arrangement would present a potential for the disclosure of City of Hope’s Confidential Information or conflict with your obligations under this agreement, then City of Hope may immediately terminate this Agreement.

7. Materials: City of Hope may furnish or provide access to certain materials to be used in providing the Services or otherwise in connection with this Agreement (the “Materials”). Ownership of all Materials remains at all times with City of Hope. You agree to use the Materials solely for the benefit of City of Hope and for purposes of performing the Services under this Agreement. You agree

COH CS 10.24.17

**CONSULTANT AGREEMENT (RESEARCH) FOR OSR USE ONLY**

not to sell, transfer, license, dispose of, disclose or provide access to the Materials to any third person or entity without City of Hope's express prior written consent. In addition to this Agreement, your use of Materials will be governed by the Confidentiality Agreement.

8. Intellectual Property Ownership: You hereby agree and acknowledge that all rights, title and interest in and to all inventions, creations, developments, designs, copyrightable works, technology, materials, information and results and proceeds of the Services which you, your employees and/or contractors may conceive, invent, create, develop or reduce to practice (whether alone or with others) as a result of or in connection with the Services, any deliverables or other materials or information provided by or for you, your employees, your contractors and/or your agents in connection with this Agreement, and any improvements, modifications or derivatives of the foregoing, the Materials or any confidential and/or proprietary information of City of Hope, (collectively all of the foregoing shall be "Work Product"), will be the sole property of City of Hope. You hereby agree to assign and do assign effective upon creation without further consideration to City of Hope all rights, title and interest worldwide in and to the Work Product, and all embodiments thereof, including, without limitation, all patent rights, copyrights, trade secret rights, and other intellectual property and proprietary rights. You agree to promptly disclose all Work Product, and all embodiments thereof, to City of Hope. You agree to, at City of Hope's expense but without further consideration, (i) execute all documents and perform all other acts necessary or appropriate, in City of Hope's discretion, to evidence or further document City of Hope's ownership of the Work Product and the rights therein, and (ii) assist City of Hope in obtaining, registering, maintaining and defending for City of Hope's benefit all patent, copyrights, trade secret rights, and other intellectual property and proprietary rights in the Work Product. Creations shall include, without limitation, all materials delivered to Customer in connection with this Agreement.

To the extent that the foregoing assignment is ineffective for any reason, you hereby grant to City of Hope under all intellectual property and proprietary rights an exclusive, worldwide, paid-up, royalty-free, transferable, irrevocable, perpetual, unrestricted license, with the right to sublicense through multiple tiers and to have any rights granted therein exercised by a third party, to make, use, sell, offer for sale, import, reproduce, distribute, display publicly or otherwise, create derivative works and improvements from, disclose and provide access without restriction and otherwise commercialize and exploit for any purpose the Work Product. You agree to and hereby waive any "moral rights" or other rights with respect to attribution of authorship or integrity of such Work Product that you may have under any applicable law under any legal theory.

9. Representations and Warranties:

(a) You represent and warrant that: (i) you are experienced and knowledgeable in the field(s) relevant to the Services; (ii) you will perform the Services hereunder to the best of your abilities; (iii) you will provide the Services in accordance with the highest industry standards and in accordance with this Agreement and any instructions or specifications provided by City of Hope from time to time; (iv) any Deliverables or Work Product you create or provide under this Agreement will conform to any applicable specifications, will be free from any defects, and will be fit for the particular purpose for which they are intended; and (v) you agree to comply with all applicable orders, rules, laws and regulations, including without limitation all U.S. FDA regulations, HIPAA and all export or import laws and regulations, and all City of Hope policies and procedures applicable to vendors, including without limitation, the False Claims Act policy, available on City of Hope's website or upon request. You will provide documentation of any licenses, permits, registrations, certifications or qualifications required to perform the Services upon City of Hope's request.

(b) You further represent and warrant that (i) your entering into this Agreement and performing all of your obligations hereunder will not breach or otherwise conflict with any other contract or obligation that legally binds you; (ii) you have the full right and authority to enter into this Agreement, and to fulfill your obligations hereunder; (iii) you have the right to grant the assignments and licenses granted herein without the need for any releases, consents or approvals not yet obtained; (iv) your performance of Services and any Deliverables and Work Product will not breach or infringe any patent, copyright, trademark or other intellectual property or proprietary right owned by third parties; and (v) each of your employees or subcontractors (if any) involved in the performance of Services will execute prior to their involvement an assignment to you of all right, title and interest in and to the Work Product in order for you to fully comply with Section 8 (Intellectual Property Ownership).

(c) Consultant must designate herein which entity's Financial Conflict of Interest (FCOI) policy will apply:

Consultant's FCOI Policy  
 COH's FCOI Policy

If Consultant's FCOI policy applies, Consultant assures City of Hope that Consultant has adequate policies and procedures in place to identify, manage, reduce and eliminate potential Financial Conflicts of Interest, as that term is defined in Title 42 of the Code of Federal Regulations, Part 50, for the Investigators (as defined in 42 C.F.R. §40.603) performing activities pursuant to this agreement. Before expending any funds under this Agreement, Consultant agrees to report to City of Hope any identified Financial



Conflicts of Interest for its Investigators and the actions it has taken to manage, reduce, or eliminate the identified Financial Conflicts of Interest.

If Consultant does not have an FCOI policy that complies with Title 42 of the Code of Federal Regulations, Part 50, Consultant agrees to notify City of Hope immediately and further agrees to abide by City of Hope's Conflict of Interest Policy.

10. Indemnity: You agree to indemnify, defend and hold harmless City of Hope and its affiliates, and the officers, directors, employees, contractors and agents of any of the foregoing, from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including without limitation interest, penalties and reasonable attorney fees and costs, that any indemnified party may incur or suffer in connection with: (i) any strict liability, wrongful or negligent action or failure to act by you or by any of your employees, contractors or agents; (ii) any breach of this Agreement by you or by any of your employees, contractors or agents; (iii) any failure by you or by any of your employees, contractors or agents to comply with any applicable laws, regulations or rules; or (iv) claims that the Services, Deliverables or Work Product violate, infringe or misappropriate the intellectual property or proprietary rights or other rights of any third parties. City of Hope will promptly notify you in writing of any such claim under this Section. You will have the right to fully control the defense and any settlement of such claim, provided that any settlement that imposes any obligations on City of Hope must be approved by City of Hope, such approval not to be unreasonably withheld. This Section sets for the entire indemnity obligation of the parties under this Agreement.

11. Warranty Disclaimer: ALL MATERIALS OR INFORMATION FURNISHED TO YOU UNDER THIS AGREEMENT ARE PROVIDED "AS IS", WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY.

12. Agency Certification: Consultant hereby certifies to City of Hope under penalty of perjury that Consultant has not been convicted of a criminal offense related to health care, is not currently debarred, excluded or otherwise ineligible for participation in federally funded programs and has not arranged or contracted (by employment or otherwise) with any employee, contractor, or agent that it knew or should have known are excluded from participation in any federal health care program, and will not arrange or contract with any such individuals or entities during the term of this Agreement. Consultant agrees to notify City of Hope in writing immediately of any threatened, proposed or actual conviction relating to health care, of any threatened, proposed or actual debarment or exclusion from participation in federally funded programs, of Consultant or any employee, contractor or agent of Consultant. Any breach of this section of the Agreement by Consultant shall be grounds for immediate termination of this Agreement by City of Hope.

13. General Provisions:

(a) Governing Law; Jurisdiction: This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be commenced in federal court in the Central District of California or in state court in the County of Los Angeles, California, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding.

(b) Publicity: You will not have the right to identify City of Hope as a customer, client or employer or otherwise use the name, logos or trademarks of City of Hope or of City of Hope's affiliates without City of Hope's prior written consent in City of Hope's sole discretion.

(c) Export Regulations: You agree to comply at all times with any export laws, regulations, orders or other restrictions imposed by the United States government or by any other governmental entity. Notwithstanding any other provision in this Agreement to the contrary, you agree and warrant that you will not import, export or re-export, directly or indirectly, any Work Product, Materials or other information or materials to any country to which such import, export or re-export is restricted or prohibited, or as to which any such government or any agency thereof requires an export license or other governmental approval at the time of such import, export or re-export without first obtaining such license or governmental approval.

(d) Provisions Relating to Use of Property Financed by Tax-Exempt Bonds: Control of Facilities and Property by City of Hope. The parties acknowledge that City of Hope has the right to approve (a) the annual budget of the facilities and property of City of Hope and each affiliate receiving your services pursuant to this Agreement (the "*Managed Facilities*"), (b) capital expenditures with respect to the Managed Facilities, (c) each disposition of property that is part of the Managed Facilities, (d) rates charged for the use of the Managed Facilities, and (e) the general nature and type of use of the Managed Facilities.

(e) Provisions Relating to Use of Property Financed by Tax-Exempt Bonds: No Inconsistent Tax Position. You agree that you are not entitled to and will not take any tax position that is inconsistent with being a service provider to City of Hope with respect to the Managed Facilities. You agree, for example, not to claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Managed Facilities.

(f) Entire Agreement: This Agreement (including any addenda and exhibits hereto) is the final and entire agreements between Consultant and City of Hope with respect to the subject matter hereof and merge all prior and contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written, of the parties relating to such subject matter. This Agreement supersedes any conflicting or inconsistent terms and conditions contained in Consultant's purchase order, invoice, proposal, statements of work, work orders or other documentation. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be void, invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision, and no waiver shall be effective unless made in writing and signed by the waiving party. This Agreement shall not be altered, amended or modified in any way except by a written instrument dated subsequent to the date of this Agreement and signed by duly authorized representatives of each party.

*[signature page follows]*

City of Hope is committed to diversity and strives to hire, develop and retain a workforce that reflects the community that we serve and in which we work. We require those providing service to City of Hope to prohibit discrimination on the basis of any protected characteristic in accordance with applicable laws, and we encourage them to promote diversity as we do to support our important goal.

**BECKMAN RESEARCH INSTITUTE OF THE  
CITY OF HOPE** (“City of Hope”)

**MONTCLAIR COMMUNITY FOUNDATION**  
 (“Consultant”)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: Javier John Dutrey

Title: Board Chair

Date: April 4, 2022

Address: 5111 Benito Street, Montclair CA 91763

Attest:

By: \_\_\_\_\_

Andrea Myrick, Secretary

Approved as to Form:

By: \_\_\_\_\_

Diane E. Robbins, City Attorney

Date: April 4, 2022

**EXHIBIT 1**

**Position Summary:**

Montclair Community Foundation will serve as a community partner to inform and enhance community responsiveness of the program, assist in program implementation strategy and evaluation within the community, abide by all HIPAA and IRB standard, procedures, and trainings as set forth by City of Hope.

**Position Accountabilities:**

\$100 per hour up to 100 hours



# CITY COUNCIL AGENDA REPORT

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**DATE:** APRIL 4, 2022                      **FILE I.D.:** CVC650  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 3                      **PREPARER:** S. STANTON

**SUBJECT:** CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM TO INCLUDE THE PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS CONSTRUCTION PROJECT

CONSIDER AWARD OF CONTRACT TO RASMUSSEN BROTHERS CONSTRUCTION, INC. IN THE AMOUNT OF \$51,845 FOR CONSTRUCTION OF THE PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS CONSTRUCTION PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 22-24 WITH RASMUSSEN BROTHERS CONSTRUCTION, INC. FOR CONSTRUCTION OF THE PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS CONSTRUCTION PROJECT

CONSIDER AUTHORIZING A \$57,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS FOR CONSTRUCTION OF THE PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS CONSTRUCTION PROJECT

CONSIDER AUTHORIZING A \$5,155 CONSTRUCTION CONTINGENCY FOR THE PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS CONSTRUCTION PROJECT

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**REASON FOR CONSIDERATION:** The City Council is requested to consider taking actions related to the Public Works/Community Development Counter and Safety Glass Construction Project. Amendments to the Capital Improvement Program, awards of contracts and agreements with the City, and appropriations of unbudgeted funds require City Council approval.

A copy of proposed Agreement No. 22-24 with Rasmussen Brothers Construction, Inc. is attached for City Council review.

**BACKGROUND:** In 2020, City Hall has had some construction work completed, including remodeling the Finance Department as part of the City of Montclair City Hall Remodel Phase 2 Project. Rasmussen Brothers Construction, Inc. (RBC) was deemed the lowest responsible and responsive bidder and constructed the project. RBC specializes in custom carpentry and cabinet making. RBC constructed and installed the new countertops, cabinets, and safety glass in the Finance Department. RBC also installed the new electronic glass doors that lead from the lobby back to the new conference room as part of the Project.

The approved City of Montclair FY 2021-22 Budget identifies multiple additional building maintenance improvements to the Civic Center Campus, including the following:

- Install safety glass at the Public Works Counter (requires countertop replacement)
- Install glass treatment on the exterior of the East Conference Room
- Install glass sliding doors to the Administration offices leading from the hallway

Staff recommends that RBC be contracted under sole-source contracting procedures to match the customized countertops and glasswork newly constructed in the Finance Department for the Public Works/Community Development Counter and Safety Glass Construction Project. This will ensure that the custom-built countertops and glass components are built and installed by the same specialty contractor. RBC has provided a bid proposal to complete the work using the same materials and assembly methods used to construct the Finance Department improvements in 2020. The bid proposal received from RBC was reviewed and found complete, accurate, and competitive to the original cost estimate.

**FISCAL IMPACT:** The adopted FY 2021-22 Budget identified these building maintenance projects as individual projects using American Rescue Plan Funds totaling \$46,000. With the identified funding source no longer available, staff recommends using 2021 Lease Revenue Bond Proceeds. The bid proposal for the work totals \$51,845, staff is also recommending a construction contingency of \$5,155. The appropriation of \$57,000 will cover the \$51,845 construction costs, and a \$5,155 construction contingency.

The total cost for the Public Works/Community Development Counter and Safety Glass Construction Project is \$57,000, and will be paid using 2021 Lease Revenue Bond Proceeds.

**RECOMMENDATION:** Staff recommends the City Council take the following actions in relation to the Public Works/Community Development Counter and Safety Glass Construction Project:

1. Amend the 2019-2024 Capital Improvement Program to include the Project.
2. Award a contract to Rasmussen Brothers Construction, Inc. in the amount of \$51,845 for construction of the Project.
3. Approve Agreement No. 22-24 with Rasmussen Brothers Construction, Inc. for construction of the Project.
4. Authorize a \$57,000 appropriation from 2021 Lease Revenue Bond proceeds for construction of the Project.
5. Authorize a \$5,155 construction contingency for the Project.



## Proposal/Estimate

March 21, 2022

OWNER: City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Attn: Mathew Paradis  
mparadis@cityofmontclair.org

JOB: Engineering/ Community Development Counter

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Rasmussen Brothers Construction, Inc. proposes to furnish all labor, materials and equipment necessary to complete the following:

Replace laminate counter top at Engineering/Community Development counters, add transaction windows to match Finance Department.

Cost includes removal and replacement of approximately 20lnft of counter and addition of transaction windows and glass.

Excludes removal of existing shutters and related work.

Cost	\$ 24,675.00
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Note: All labor is figured at prevailing wage rates  
Proposal good for 90 days

Submitted by:

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Michael Rasmussen, President

40441 Gavilan Mountain Road • Fallbrook, CA 92028 • p 760.731.5243 • f 760.731.6452  
rbci@wildblue.net



## Proposal/Estimate

March 21, 2022

OWNER: City of Montclair  
5111 Benito Street  
Montclair, CA 91763  
Attn: Mathew Paradis  
mparadis@cityofmontclair.org

JOB: Administration Office and Conference Room Automatic Doors

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Rasmussen Brothers Construction, Inc. proposes to furnish all labor, materials and equipment necessary to complete the following:

Replace sliding glass door at Conference Room with automatic/electric sliding glass door to match the existing doors.

Remove double doors at Administration Office, enlarge opening, drywall, paint and install new 8ft automatic/electric sliding glass door to match existing doors at Finance Department

Electrical work and card readers to be provided and installed by the City.

Excludes flooring patch at Administration Office if needed.

Cost                   \$ 27,170.00

Note: All labor is figured at prevailing wage rates  
Proposal good for 90 days

Submitted by:

---

Michael Rasmussen, President

40441 Gavilan Mountain Road • Fallbrook, CA 92028 • p 760.731.5243 • f 760.731.6452  
rbci@wildblue.net



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

**A. Recitals.**

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

**PUBLIC WORKS/COMMUNITY DEVELOPMENT COUNTER AND SAFETY GLASS  
CONSTRUCTION PROJECT**

"PROJECT" hereinafter.

**B. Resolution.**

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions.

## AGREEMENT

CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for each calendar day PROJECT remains incomplete beyond the expiration of the completion date. CITY may deduct the amount thereof from any moneys due or that may become due the CONTRACTOR under this contract. Progress payments made after the scheduled date of completion shall not constitute a waiver of liquidated damages.

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

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

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

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

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

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

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

## AGREEMENT

- (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.
  - (5) Automobile - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
  - (6) Automobile - Property Damage \$500,000 each accident.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
- (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
  - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
- d. Each such policy of insurance provided for in paragraph b. shall:
- (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
  - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
  - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
  - (4) Contain a clause substantially in the following words:  
  
"It is hereby understood and agreed that this policy may not be canceled nor the amount of the coverage thereof reduced until thirty (30) days after receipt by CITY of a written notice of such cancellation or reduction of coverage as evidenced by receipt of a registered letter."
  - (5) Otherwise be in form satisfactory to CITY.
- e. The CONTRACTOR shall at the time of the execution of the contract present the original policies of insurance required in paragraphs a. and b., hereof, or present an endorsement of the insurance company, showing the issuance of such insurance, and the additional insureds and other provisions required herein.

## AGREEMENT

6. CONTRACTOR'S LIABILITY: The City of Montclair and its respective officers, agents and employees shall not be answerable or accountable in any manner for any loss or damage that may happen to the project or any part thereof, or for any of the materials or other things used or employed in performing the project; or for injury or damage to any person or persons, either workmen, employees of the CONTRACTOR or his subcontractors or the public, whatsoever arising out of or in connection with the performance of the project. The CONTRACTOR shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the sole negligence or willful misconduct of CITY, its employees, servants, or independent contractors who are directly responsible to CITY during the progress of the project or at any time before its completion and final acceptance.

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

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

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

7. NONDISCRIMINATION: No discrimination shall be made in the employment of persons upon public works because of the race, color, sex, sexual preference, sexual orientation, or religion of such persons, and every contractor for public works violating

**AGREEMENT**

this section is subject to all the penalties imposed for a violation of Division 2, Part 7, Chapter 1 of the Labor Code in accordance with the provisions of § 1735 of said Code.

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

9. **CONTRACT PRICE AND PAYMENT:** CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **March 21, 2022**.

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

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

CONTRACTOR  
**RASMUSSEN BROTHERS  
CONSTRUCTION, INC.**  
40441 Galvin Mountain Rd  
Fallbrook, CA 92028

CITY  
**CITY OF MONTCLAIR, CALIFORNIA**  
5111 Benito Street  
Montclair, CA 91763

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

By: \_\_\_\_\_

Javier "John" Dutrey  
Mayor

**ATTEST:**

By: \_\_\_\_\_

Andrea M. Myrick  
City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Diane E. Robbins  
City Attorney



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	CVC050-60
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	S. STANTON

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-25 WITH INLAND SIGNS INC. FOR CONSTRUCTION OF THE CITY HALL MONUMENT SIGN REPLACEMENT PROJECT

CONSIDER AUTHORIZING A \$60,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS AND \$35,000 FROM THE FACILITY MAINTENANCE FUND FOR CONSTRUCTION OF THE CITY HALL MONUMENT SIGN REPLACEMENT PROJECT

CONSIDER AUTHORIZING A \$5,000 CONSTRUCTION CONTINGENCY FOR THE CITY HALL MONUMENT SIGN REPLACEMENT PROJECT

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**REASON FOR CONSIDERATION:** The City Council is requested to consider taking actions related to the City Hall Monument Sign Replacement Project. Awards of contracts and agreements with the City and appropriations of unbudgeted funds require City Council approval.

A copy of Agreement No. 22-25 with Inland Signs, Inc. is attached for City Council review.

**BACKGROUND:** The 2019-2024 Capital Improvement Program (CIP) identifies a project to replace the Montclair City Hall monument sign located on the northwest corner of the Civic Center campus. The original concrete sign was installed in the 1970s and was constructed with a concrete base and wooden letters. Over the years, the sign has become dilapidated and the wooden letters have had to be replaced several times due to deterioration, vandalism, and theft.

The replacement sign identified in the CIP was a ground-level LED message board sign constructed within the existing boundaries of the current monument sign. It was planned to be placed at an angle facing the intersection of Fremont Avenue and Benito Street. The sign would have a brick base, painted aluminum cabinet, and a double sided LED message board, approximately 4 feet by 8 feet in size. The message board would be sufficient in size to produce typed notices for upcoming events.

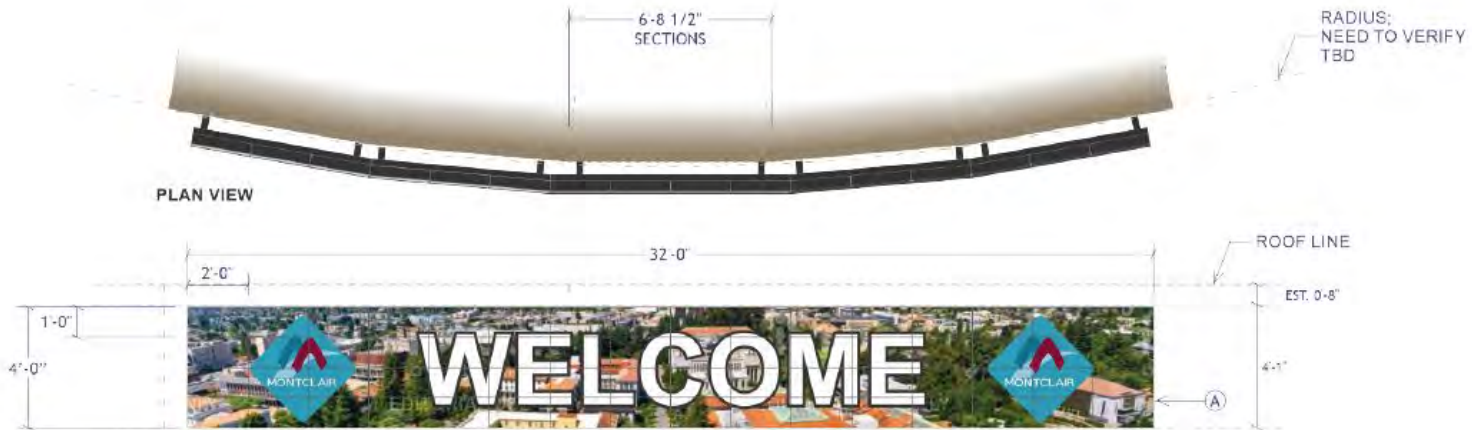
Staff recently presented the LED message board sign project to the Development Review Committee (DRC). The committee expressed concerns about continued vandalism and theft with the LED message board. The DRC recommended that the sign be mounted atop the Council Chamber building, which would reduce the potential occurrence of vandalism and provide an opportunity to expand the size of the message board. Exhibit A, attached to this report, provides a conceptual image of the LED message board mounted atop the City Council Chamber. A larger message board would broaden the capability for use by the City and could be used for community alerts, public notices, City events, school activities including celebratory accomplishments, and provide full video display graphics. As part of relocating the LED message board atop the Council Chambers, the original concrete monument sign would be under consideration for refurbishment as part of the Civic Center Master Plan.

**FISCAL IMPACT:** The adopted FY 2021–22 Budget appropriated \$60,000 of American Rescue Plan funds for replacement of the monument sign. The bid proposal received from Inland Signs Inc., is \$95,000. It is recommended that the 2021 Lease Revenue Bond Proceeds replace the use of \$60,000 from the American Rescue Plan funds, and that the City Council authorize an additional appropriation of \$35,000 from the Facility Maintenance Fund to cover the remaining cost of the sign and a \$5,000 construction contingency, bringing the overall appropriation to \$100,000.

**RECOMMENDATION:** Staff recommends the City Council take the following actions in relation to the City Hall Monument Sign Replacement Project:

1. Approve Agreement No. 22–25 with Inland Signs Inc. for construction of Project.
2. Authorize a \$60,000 appropriation from 2021 Lease Revenue Bond proceeds and \$35,000 from the Facility Maintenance Fund for construction of the Project.
3. Authorize a \$5,000 construction contingency for the Project.

EXHIBIT A



**LED DIGITAL DISPLAY 128 SQ.FT.**

SCALE: 1/4" = 1'-0"  
SIGN #1

A. CIRRUS LED<sup>s</sup> DISPLAY MODULES; MOUNTED TO ALUMINUM FRAME SUPPORTS - BLACK.



**AERIAL PHOTO / SITE PLAN**  
NOT TO SCALE



**PROPOSED SIGN; NORTH WEST ELEVATION**  
NOT TO SCALE





# Quote

#QUO368

Inland Signs Inc.  
 1715 S. Bon View Ave.  
 Ontario CA 91761  
 United States  
 Bus:(909)923-0006 Fax:(909)923-0037

**Bill To**  
 City of Montclair  
 5111 Benito Street  
 Montclair CA 91763  
 United States

**Ship To**  
 City of Montclair  
 5111 Benito Street  
 Montclair CA 91763  
 United States

Date	Expires	Sales Rep	Shipping Method	Terms
3/25/2022	4/24/2022	Joe Silva		Contract

Item	Quantity	U/M	Rate	Amount
<b>Monument Sign</b> Manufacture and install one 6mm full color Cirrus digital display 4' tall x 32 ft long around Council Camber building at the top. 1 1/2" aluminum arch tubing frame and perforated metal cover on all sides painted black. Display consists of 64 LED panels and 64 1 x2' aluminum frames. One M1 Pro controller with auto mapping, 1 screenhub cloud software with lifetime training and support from Cirrus.	1		\$94,163.86	\$94,163.86
<b>Permit Fee</b> Permit acquisition fee.	1	EA	\$350.00	\$350.00

\*\*Price includes two visits to the city. Additional visits will be billed at \$65.00 per hour\*\*

\*\*Permits billed at cost at time of completion\*\*

We require a 50% deposit prior to securing permit with the balance due upon completion

<b>Subtotal</b>	\$94,513.86
<b>Total</b>	\$94,513.86

**Acceptance of Estimate** \_\_\_\_\_

1. All electrical signs will be connected to an existing power source within ten (10) feet of sign location. Inland Signs is not responsible for electric lines which may be required.
2. All signage remains the property of Inland Signs until the entire amount of this proposal is paid in full.
3. A non-refundable deposit of 50% of the proposal amount is due and payable upon acceptance of this proposal. The balance, including all costs associated with securing the required permits is due upon completion of the installation.
4. Any balance remaining after 10 calendar days from the completion of the installation will be subject to a 5% penalty. An additional 5% penalty will be assessed every 30 days on any remaining unpaid balance.
5. All estimates are good for 30days from the date of this estimate.



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

**A. Recitals.**

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

**CITY HALL MONUMENT SIGN REPLACEMENT PROJECT**

"PROJECT" hereinafter.

**B. Resolution.**

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

1. GENERAL SCOPE OF WORK: CONTRACTOR shall furnish all necessary labor, tools, materials, appliances, and equipment for and do all work contemplated and embraced for the PROJECT. Said PROJECT to be performed in accordance with specifications and standards on file in the Office of the City Engineer and in accordance with bid prices hereinafter mentioned and in accordance with the instructions of the Engineer.

2. INCORPORATED DOCUMENTS TO BE CONSIDERED COMPLEMENTARY: The aforesaid specifications are incorporated herein by reference thereto and made a part hereof with like force and effect as if all of said documents were set forth in full herein. Said documents, the Notice Inviting Bids, the Instructions to Bidders, the Proposal and any City-issued addenda, together with this written Agreement, shall constitute the contract between the parties. This contract is intended to require a complete and finished piece of work and anything necessary to complete the work properly and in accordance with the law and lawful governmental regulations shall be performed by the CONTRACTOR whether set out specifically in the contract or not. Should it be ascertained that any inconsistency exists between the aforesaid documents and this written Agreement, the provisions of this written Agreement shall control.

3. TERMS OF CONTRACT: The CONTRACTOR agrees to execute the contract within ten (10) calendar days from the date of notice of award of the contract and to complete his portion of PROJECT within the time specified in the Special Provisions. CONTRACTOR agrees further to the assessment of liquidated damages in the amount specified in the Special Provisions or the Standard Specifications, whichever is higher, for

## AGREEMENT

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

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

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

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

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

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

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

- (1) Commercial General Liability (CGL) with "occurrence" form CG 00 01 - Bodily Injury (not auto) \$3,000,000 per occurrence, .
- (2) Commercial General Liability (CGL) with "occurrence" form CG 00 01 - Property Damage (not auto) \$2,00,000 each accident.
- (3) Contractor's Protective - Bodily Injury \$1,000,000 each person; \$2,000,000 each accident.
- (4) Contractor's Protective - Property Damage \$500,000 each accident; \$1,000,000 aggregate.

## AGREEMENT

- (5) Automobile Liability Insurance with form CA 0001 covering "Any Auto" (Symbol 1) with limits no less than \$2,000,000 each accident for bodily injury and property damage.
- c. The policy of insurance provided for in subparagraph a. shall contain an endorsement which:
    - (1) Waives all right of subrogation against all persons and entities specified in subparagraph 4.d.(2) hereof to be listed as additional insureds in the policy of insurance provided for in paragraph b. by reason of any claim arising out of or connected with the operations of CONTRACTOR or any subcontractor in performing the work provided for herein;
    - (2) Provides it shall not be canceled or altered without thirty (30) days' written notice thereof given to CITY by registered mail.
  - d. Each such policy of insurance provided for in paragraph b. shall:
    - (1) Be issued by an insurance company approved in writing by CITY, which is qualified to do business in the State of California;
    - (2) Name as additional insureds the CITY, its officers, agents and employees, and any other parties specified in the bid documents to be so included;
    - (3) Specify it acts as primary insurance and that no insurance held or owned by the designated additional insureds shall be called upon to cover a loss under said policy;
    - (4) Contain a clause substantially in the following words:

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

## AGREEMENT

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

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

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

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

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

**AGREEMENT**

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

9. **CONTRACT PRICE AND PAYMENT:** CITY shall pay to the CONTRACTOR for furnishing the material and doing the prescribed work the unit prices set forth in accordance with CONTRACTOR's Proposal dated **March 25, 2022**.

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

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

CONTRACTOR

CITY

**INLAND SIGNS**  
1751 S. Bon View  
Ontario, CA. 91761

**CITY OF MONTCLAIR, CALIFORNIA**  
5111 Benito Street  
Montclair, CA 91763

By: \_\_\_\_\_

By: \_\_\_\_\_

Javier "John" Dutrey  
Mayor

\_\_\_\_\_  
Name

**ATTEST:**

\_\_\_\_\_  
Title

By: \_\_\_\_\_

Andrea M. Myrick  
City Clerk

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Name

By: \_\_\_\_\_

Diane E. Robbins  
City Attorney

\_\_\_\_\_  
Title



# CITY COUNCIL AGENDA REPORT

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**DATE:** APRIL 4, 2022                      **FILE I.D.:** HSV030  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** HUMAN SVCS.  
**ITEM NO.:** 5    **PREPARER:** A. COLUNGA

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-28 WITH THE SAN JOAQUIN COUNTY OFFICE OF EDUCATION'S CENTER FOR EDUCATIONAL DEVELOPMENT AND RESEARCH (SJCOE/CEDR) TO ADVERTISE JOB POSTINGS ON EDJOIN.ORG FOR THE MONTCLAIR AFTER-SCHOOL PROGRAM

CONSIDER AUTHORIZING THE DIRECTOR OF HUMAN SERVICES TO SIGN AGREEMENT NO. 22-28 WITH SJCOE/CEDR

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**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-28 with the Center for Educational Development and Research, a department of the San Joaquin County Office of Education (SJCOE/CEDR), to advertise job postings on their website, EDJOIN.org, for the Montclair After-School Program.

**BACKGROUND:** Since 1999, the Human Services Department has delivered after-school programs; MAP serves eleven school sites. The goal of MAP is to promote after-school enrichment to enhance children's educational and learning capabilities. Funding for this program comes from the After-School Education and Safety (ASES) grants made available to local education authorities, such as Ontario-Montclair School District (OMSD), to provide communities with enhanced community-based school services in an effort to strengthen healthy child development.

It has become increasingly difficult to recruit staff for MAP, with this year proving to be the most challenging. Human Services staff have made adjustments to help expedite the hiring process, including contracting with a staffing agency. To increase our reach with the MAP job postings, Human Services staff recommends posting these openings on the education-focused job website, EDJOIN.org.

EDJOIN.org promotes itself as the top education job website, utilized by 5,450 agencies to reach thousands of candidates. The website, maintained by SJCOE/CEDR, has been filling education positions for over twenty years.

Agreement No. 22-28 with SJCOE/CEDR to utilize the EDJOIN.org online job board will allow the Montclair After-School Program to advertise five job postings for up to sixty days each. Human Services Staff intend to post the part-time Learning Leader position on the EDJOIN website for five consecutive sixty-day periods.

**FISCAL IMPACT:** If approved, this agreement would be funded with the existing Human Services Department Montclair After-School Program grant budget. The City of Montclair will pay SJCOE/CEDR \$1,000 for five job postings of sixty days each on EDJOIN.org. There will be no adverse impact to the City's General Fund associated with the City Council's approval of Agreement No. 22-28. The term of the agreement is open-ended, beginning April 4, 2022 and remaining in effect until the use of each job posting is exhausted.

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

1. Approve Agreement No. 22-28 with SJCOE/CEDR to advertise job postings on EDJOIN.org for the Montclair After-School Program.
2. Authorize the Director of Human Services to sign Agreement No. 22-28 with SJCOE/CEDR.





**San Joaquin County Office of Education**  
James A. Mousalimas, County Superintendent of Schools

**ED-JOIN SERVICE AGREEMENT –Fee Schedule 4**

This ED-JOIN Service Agreement (hereinafter "Agreement") is by and between the organization/employer which seeks to use ED-JOIN services (hereinafter "Employer") whose name, address and other information appears herein this Agreement, and the Center for Educational Development and Research, (hereinafter "SJCOE/CEDR"), a department of the San Joaquin County Office of Education with its principle place of business at 2901 Arch-Airport Road, Stockton, CA 95206.

WHEREAS; Upon subscribing to the ED-JOIN service, in accordance with the terms of this Agreement, the Employer will be able to have a job posted on the ED-JOIN web site with no access to the online applications, the applicant tracking features or the applicant bank.

NOW, THEREFORE, In consideration of the foregoing premises and the promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, SJCOE/CEDR and Employer, intending to be legally bound, hereby agree as follows:

**Section 1: Employer’s Duties**

Employer agrees that it will not perform or fail to perform any act which would violate federal, state, or local law. Employer also agrees NOT MAKE UNSOLICITED contact to ED-JOIN applicants to promote any services or products. This action is grounds for immediate termination of your account. You will also be in violation of this Agreement and subject to legal action.

**Section 2: Service Fees and Charges**

In addition to Employer’s other duties set forth in this Agreement, Employer will be required to and shall pay all fees and charges - as set forth below:

<b>Service</b>	<b>Service Period</b>	<b>Fee</b>
(5) Job Postings	Five Postings - Sixty (60) days per posting	\$1000.00
<b>TOTAL</b>		<b>\$1000.00</b>

**Section 3: Payment Policy**

Employer shall pay to SJCOE/CEDR the total fees, as defined in Section 2 above, upon signing this Agreement. The Service Period shall begin from the date the Posting opens to a maximum of 60 days. The fee must be paid by credit card before the posting(s) go live.

**Section 4: Service Cancellation**

Employer may at any time cancel this contract upon written notice to SJCOE/CEDR. The service fee is not refundable upon any such notice of termination.

**Section 5: Service Term**

The term of this Agreement shall continue until the end of the Service Period or Employer is terminated by SJCOE/CEDR under any provisions of this Agreement. SJCOE/CEDR reserves the right to immediately terminate this Agreement upon: (i) A breach of Employer duties provided for under this Agreement including, but not limited to, Employer’s failure to pay any amounts when they become due; or (ii) Making unsolicited contact to ED-JOIN applicants to promote any services or products; or (iii) A requirement by

law or regulatory act; or (iv) Employer becomes insolvent or commits any act of bankruptcy, or a petition for involuntary bankruptcy is filed against Employer, or Employer makes a general assignment for the benefit of creditors under the bankruptcy or insolvency laws.

**Section 6: Regulatory Compliance**

Employer represents and warrants that it will conform to any and all laws, rules, regulations, requirements and/or other standards that are established by regulatory agencies. Employer specifically acknowledges and agrees that SJCOE/CEDR has not and is not expected to provide Employer with any analysis, interpretation or advice regarding compliance with any aspect of any such laws, regulations, or guidelines.

**Section 7: Limitations of Damages**

SJCOE/CEDR shall not be held liable for any indirect, incidental, special or consequential damages or loss of revenue or profits arising under or with respect to this Agreement, event if SJCOE/CEDR has been advised of possibility of such the damages.

**Section 8: Indemnification**

SJCOE/CEDR agrees to indemnify, defend and hold harmless Employer for and against any and all actions, claims, complaints, formal or informal, caused by or the result of negligence of SJCOE/CEDR.

Employer agrees to indemnify, defend and hold harmless SJCOE/CEDR for and against any and all actions, claims, complaints, formal or informal, caused or the result of negligence of Employer.

**Section 9: Relationship of the Parties**

This Agreement is and between two independent parties and is not intended to and shall not be construed to create a relationship of agent, servant, employee, partnership, joint venture or association.

**Section 10: Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing. No change, waiver, or discharge hereof shall be valid unless it is in writing and is executed by the party against whom such change, waiver, or discharge is sought to be enforced.

**Section 11: Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

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I/We have carefully examined the provisions of the Agreement and I/we hereby accept to have read and fully understood the terms stated therein.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City, State AND Zip

\_\_\_\_\_  
Company (Do NOT use Acronyms)

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
E-Mail Address

\_\_\_\_\_  
Fax Number



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	LIT200
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	E. STARR
<b>SUBJECT:</b>	CONSIDER APPROVAL OF AGREEMENT NO. 22-29 WITH THE COUNTY OF SAN BERNARDINO AUTHORIZING THE COUNTY'S USE OF THE LOCAL SUBDIVISIONS' ALLOCATIONS (INCLUDING MONTCLAIR'S ALLOCATION) OF CALIFORNIA OPIOID SETTLEMENT FUNDS		

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**REASON FOR CONSIDERATION:** On March 1, 2022, the San Bernardino County Board of Supervisors approved the County-City Allocation Agreement for use of the local allocation of National Opioid Settlement funds for cities. In order to take advantage of San Bernardino County's drug addiction and crisis programs administered through the Department of Behavioral Health, staff recommends Montclair opt into the County-City Allocation Agreement.

On November 20, 2021, the City Manager elected to participate in the Janssen Settlement by signing the necessary Settlement Participation Forms, thereby becoming a Participant Subdivision. Copies of the Settlement Participation Forms are attached to this report for reference. Participation in the Janssen Settlement entitles the City to (i) the benefits of the settlement agreement for the purposes provided therein; (ii) dismisses with prejudice any Released Claims filed by the City; and (iii) forever settles any and all Released Claims that may exist as of such date. There are two National Opioid Settlements, one with the manufacturers of opioids and one with the distributors of opioids.

A copy of proposed Agreement No. 22-29 with the County is attached for City Council review and consideration.

**BACKGROUND:** On July 21, 2021, the National Prescription Opiate Litigation MDL Plaintiffs' Executive Committee, several State Attorneys General, and four major defendants announced agreement on terms of proposed nationwide settlements (the "Janssen Settlement") to resolve all opioids litigation brought by states and local political subdivisions against the three largest pharmaceutical opioid distributors, including McKesson Corporation, Cardinal Health, Inc., AmerisourceBergen Corporation (together, the "Distributors"), and opioid manufacturers, including Johnson & Johnson, Janssen Pharmaceuticals, Inc., and Ortho-McNeil-Janssen Pharmaceuticals, Inc. (together, the "Manufacturers") (collectively, the "Settling Defendants"). These settlements provide substantial funds to states and local subdivisions for abatement of the opioids epidemic across the country, and will impose transformative changes in the way the settling defendants conduct their business.

The National Prescription Opiate Litigation Plaintiffs' Executive Committee confirmed participation of over 90 percent of litigating local governments nationwide in the \$26 billion global opioid settlements. The settlements require 85% of funds be allocated to programs that will help address the ongoing opioid crisis through treatment, education, and prevention efforts. Majorities of states, including California, have already passed agreements that dictate how funds will be distributed between state and local subdivision governments, ensuring funds will effectively reach the communities they intend to benefit.

The settlements currently have a 100 percent rate of participation from litigating local governments in nearly forty states, and is the first of its kind to administer resources directly to state and local governments specifically for relief programs to help rebuild the devastation caused by the opioid epidemic.

The settlement will distribute funds based on population adjusted for the proportionate share of the opioid epidemic impact. The share of the impact is calculated using detailed, and objective national data, including the amount of opioids shipped to each respective state, the number of opioid-related deaths that occurred in each respective state, and the number of people who suffer opioid use disorder in each respective state.

Initial deposits were put into escrow in 2021, and the first round of funding for many programs could be delivered as soon as May 2022 following a consent judgment within each participating state. Additional funds are expected to be received by July 2022. The settlement with the Distributors will be paid over an eighteen-year period while the settlement with the Manufacturers will be paid over nine years. The settlement also calls for injunctive relief that requires significant changes to corporate practices to protect consumer health and welfare. Litigation continues in state and federal courts around the country against other companies in the opioid supply chain.

On November 16, 2021, the San Bernardino County Board of Supervisors (the "Board") approved San Bernardino County's participation in the two nationwide settlements (together, the "Settlements") with the Settling Defendants.

The Board also authorized the County to enter into a State-Subdivision Agreement ("State Allocation Agreement") with the State of California regarding the distribution and use of the funds from the Settlements. Under the terms of the Settlements, cities and towns with populations exceeding 10,000 (the "Local Subdivisions") are permitted to participate in the settlements even if they had not filed a lawsuit against the Settling Defendants.

Under the State Allocation Agreement, a Local Subdivision's share of the money from the Settlements will be distributed by the settlement administrator to the county where the Local Subdivision is located unless, at least 60 days prior to a payment date, the Local Subdivision notifies the settlement administrator that it would like a direct distribution of its share of the settlement funds.

Several Local Subdivisions in San Bernardino County (including Montclair) have indicated that they do not intend to take a direct distribution of their share of the settlement money, but instead have asked that the County enter into an allocation agreement with them to formalize the arrangement and to ensure that the funds are used in accordance with the terms of the settlement agreements.

Under terms of the settlement agreements, each City's allocation from the settlement agreement must be used exclusively for future opioid remediation in one or more areas describe in the list of opioid remediation uses. Additionally, at least 50 percent of those funds received in each calendar year must be used for one or more of the following High Impact Abatement Activities:

- The provision of matching funds for operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
- Creating new or expended Substance Use Disorder ("SUD") treatment infrastructure;

- Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;
- Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
- Interventions to prevent drug addiction in vulnerable youth.

The County's ability to pool each city's settlement money with the County's allotment of funds will allow San Bernardino County to fund its opioid remediation programs and make a more significant impact in serving the needs of the residents throughout San Bernardino County.

The San Bernardino County Department of Behavioral Health will be overseeing the use of the settlement funds on behalf of the County. Approval of Agreement No. 22-29 between Montclair and San Bernardino County will formalize the arrangement relating to the distribution and use of Montclair's share of the settlement funds. Under terms of the Agreement, Montclair agrees that it will not elect to take a direct distribution of its share of the settlement money. In exchange, the County agrees that it will use the Local Subdivision shares of the settlement money for opioid abatement purposes in accordance with the terms of the settlement agreements and State Allocation Agreement, and be responsible for all administrative obligations under those agreements.

Agreement No. 22-29 does not impose any obligation on the City other than the forfeit of its share of the settlement funds, nor does it impose any obligation on the County beyond what it is already required to do under the terms of the settlement agreements and State Allocation Agreement.

**FISCAL IMPACT:** Approval of Agreement No. 22-29 will not result in any cost impact on the General Fund. The total amount of revenue from the opioid settlements is unknown at this time, as it will depend on the number of cities that participate in the agreement with San Bernardino County. Montclair's allocation was not projected to be substantial. Cost to administer the funds and programs related to the State Allocation Agreement and terms of the settlement agreements will be borne by San Bernardino County, paid for from the opioid settlement disbursement.

**RECOMMENDATION:** Staff recommends the City Council approve Agreement No. 22-29 with the County of San Bernardino authorizing the County's use of the Local Subdivisions' allocations (including Montclair's allocation) of California Opioid Settlement Funds.



Contract Number

\_\_\_\_\_

SAP Number

\_\_\_\_\_

City of Montclair  
Agreement No. 22-29

### CAO – Finance and Administration

Department Contract Representative \_\_\_\_\_  
Telephone Number \_\_\_\_\_

Contractor \_\_\_\_\_ City of Montclair  
Contractor Representative \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
Contract Term \_\_\_\_\_  
Original Contract Amount \_\_\_\_\_  
Amendment Amount \_\_\_\_\_  
Total Contract Amount \_\_\_\_\_  
Cost Center \_\_\_\_\_

This Agreement for the Use of the Local Allocation of California Opioid Settlement Funds (“Agreement”) is made and entered into on the date this Agreement is fully executed by and between SAN BERNARDINO COUNTY (“County”) and CITY OF MONTCLAIR (“City”). City and County may be referred to individually as “Party” and or collectively as “Parties.”

**WHEREAS**, the United States is facing an ongoing public health crisis of opioid abuse, addiction, overdose, and death. The State of California and California counties and cities have spent and continue to spend millions of dollars each year to address the direct consequences of this crisis; and

**WHEREAS**, in response to the opioid crisis, counties, cities, and states across the country filed lawsuits to hold opioid manufacturers, distributors, pharmacies, and others responsible for the harms caused by their deception, negligence, and creation of a public nuisance; and

**WHEREAS**, on or about July 19, 2018, the County filed a lawsuit in the United States District Court for the Central District of California against numerous opioid manufacturers and distributors alleging that as a result of the unlawful conduct of the defendants, the opioid crisis resulted, which caused damage to the County and its residents; and

**WHEREAS**, the County’s lawsuit was transferred to the United States District Court for the Northern District of Ohio to become part of the multidistrict litigation (“MDL”), consisting of thousands of lawsuits brought by various states and local subdivisions, including counties, cities, and special districts, against a number of opioid distributors and manufacturers; and

**WHEREAS**, on or about, July 21, 2021, distributors McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively, “Distributors”), and manufacturers Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc. (collectively, “Janssen”) tentatively reached two separate settlements (hereinafter referred to as the “Distributor Settlement Agreement” and “Janssen Settlement Agreement,” respectively) in the MDL, which allow for participation by eligible non-litigating Local Subdivisions; and

**WHEREAS**, City is an eligible non-litigating Local Subdivision and has submitted the requisite documentation necessary to participate in the Distributor and Janssen settlements;

**WHEREAS**, under the Distributor and Janssen Settlement Agreements, the states and their Local Subdivisions may enter into allocation agreements to govern how the settlements funds from the two settlements coming to a state will be allocated to the state and its Local Subdivisions; and

**WHEREAS**, the State of California (“State”) and its Local Subdivisions have entered into Allocation Agreements for both the Distributor and Janssen settlements, which provide that each eligible Local Subdivision that participates in the settlements will have its Local Allocation go to the county where the subdivision is located, unless the Local Subdivision notifies the Settlement Fund Administrator, at least 60 days before each payment date, that it elects to take a direct distribution of its Local Allocation; and

**WHEREAS**, the City has decided it will not take a direct distribution of its Local Allocation, and will instead have its Local Allocation distributed to the County; and

**WHEREAS**, the parties wish to set forth the terms as to the County’s use of the City’s Local Allocation; and

**NOW, THEREFORE**, in consideration of the preceding recitals, together with the mutual covenants hereinafter contained, the parties hereto mutually agree that the above recitals are true and correct and incorporated into the terms of this Agreement and as follows:

**A. DEFINITIONS**

- a. *CA Abatement Accounts Fund* shall mean “CA Abatement Accounts Fund” as defined in the Allocation Agreements.
- b. *Allocation Agreement(s)* means the allocation agreements entered into by and between the State and its Local Subdivisions specifying how the settlement funds from the Distributor and Janssen settlements will be distributed to the State and its Local Subdivisions. These agreements are entitled, “Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Distributor Settlement” and “Proposed California State-Subdivision Agreement Regarding Distribution and Use of Settlement Funds – Janssen Settlement.”
- c. *DHCS* is the California Department of Health Care Services.
- d. *Local Allocation* means a Local Subdivision’s share of the settlement funds from the Distributor and Janssen settlements, as set forth in Appendix 1 to the Allocation Agreements.
- e. *Local Subdivision(s)* means cities and counties.
- f. *Master Agreements* shall refer to the Distributor Settlement Agreement and the Janssen Settlement Agreement.

- g. *Settlement Fund Administrator* shall mean the “Settlement Fund Administrator” as defined in the Master Agreements.

**B. SCOPE**

- a. This Agreement supplements and is subject to the terms of the Master Agreements and the Allocation Agreements and any amendments thereto. If any term of this Agreement is inconsistent with a mandatory term of the Master Agreements or the Allocation Agreements, the order of the governing document shall be as follows: Master Agreements, Allocation Agreements, and last, this Agreement.
- b. This Agreement governs the County’s use of the City’s Local Allocation paid directly to the County.

**C. USE OF CITY’S LOCAL ALLOCATION**

a. Participation

- I. City shall have all of its Local Allocation paid directly to the County.
- II. City shall not, at any time, advise the Settlement Fund Administrator that it requests direct payment of its Local Allocation.
- III. The parties understand that the Local Allocation is payable over an approximate 18 year period. The parties further understand that the yearly disbursement amount of the Local Allocation payment may vary.

b. County’s Use of the City’s Local Allocation

- I. The City’s Local Allocation will become part of the County’s share of the CA Abatement Accounts Fund, which will be:
  - 1. Used by County in accordance with Section 4.B.ii (Use of CA Abatement Account Funds) of the Allocation Agreements; and
  - 2. Reported on by County in accordance with Section 4.B.iii (CA Abatement Accounts Fund Oversight) of the Allocation Agreements.
- II. The parties understand and agree that the City’s Local Allocation that will be distributed to the County may only be used by County for future opioid remediation as described in Exhibit E to the Master Agreements, attached hereto as **Attachment I**.
- III. The parties also understand and agree that no less than 50% of the CA Abatement Accounts Fund in each calendar year will be used for one or more of the following High Impact Abatement Activities:
  - 1. The provision of matching funds or operating costs for substance use disorder facilities within the Behavioral Health Continuum Infrastructure Program;
  - 2. Creating new or expanded Substance Use Disorder (“SUD”) treatment infrastructure;
  - 3. Addressing the needs of communities of color and vulnerable populations (including sheltered and unsheltered homeless populations) that are disproportionately impacted by SUD;



4. Diversion of people with SUD from the justice system into treatment, including by providing training and resources to first and early responders (sworn and non-sworn) and implementing best practices for outreach, diversion and deflection, employability, restorative justice, and harm reduction; and/or
  5. Interventions to prevent drug addiction in vulnerable youth.
- IV. County understands and agrees that it is responsible for the reporting requirements to DHCS as specified in Section 5 of the Allocation Agreements.
  - V. County understands and agrees that it is responsible for responding to any DHCS oversight inquiries and/or requests as specified in Section 4.B.iii. of the Allocation Agreements.
  - VI. County will track all deposits and expenditures of CA Abatement Accounts Funds consistent with Section 5(c) of the Allocation Agreements.

**D. GENERAL CONTRACT REQUIREMENTS**

**D.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**D.2 Assignability**

Neither party may assign this Agreement without the prior written consent of the other party.

**D.3 Attorney's Fees and Costs**

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party.

**D.4 Choice of Law**

This Agreement shall be governed by and construed according to the laws of the State of California.

**D.5 Legality and Severability**

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**D.6 Mutual Covenants**

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

**D.7 Relationship of the Parties**

Nothing contained in this Agreement shall be construed as creating a joint venture, or partnership, between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**D.8 Termination for Convenience**

Except as otherwise specified in this provision, the County and the City each reserve the right to terminate the Agreement, for any reason, with a thirty (30) day written notice of termination. In the event of termination of this Agreement, the City shall not be entitled to any of the City's Local Allocation that (1) had already been distributed to the County prior to the effective date of termination, or (2) is scheduled to be distributed to the County within 60 days of the notice of termination.

**D.9 Notice**

All written notices provided for in this Agreement or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

To County:

County Administrative Office – Finance & Administration  
Matthew Erickson, Chief Financial Officer  
385 N. Arrowhead Ave. 4<sup>th</sup> Floor  
San Bernardino, CA 92415-0123

To City:

City of Montclair  
Attn: Janet Kulbeck, Finance Director  
PO Box 2308  
Montclair, CA 91763-2308

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

**D.10 Venue**

The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**D.11 Informal Dispute Resolution**

In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**E. TERM OF AGREEMENT**

This Agreement is effective as of the date fully executed and expires following the final settlement payout, but may be terminated earlier in accordance with the provisions of this Agreement.

**F. INDEMNIFICATION**

**F.1** County agrees to indemnify, defend (with counsel reasonably approved by City) and hold harmless City and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from County’s negligent acts or omissions which arise from County’s performance of its obligations under this Agreement.

**F.2** City agrees to indemnify, defend (with counsel reasonably approved by County), and hold harmless County and its officers, employees, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from City’s negligent acts or omissions which arise from City’s performance of its obligations under this Agreement.

**F.3** In the event County and/or City is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Agreement, County and/or City shall indemnify the other to the extent of its comparative fault.

**G. INSURANCE**

City and County are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Workers' Compensation and warrant that through their insurance policies or respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement.

**H. SIGNATURES**

This Agreement 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 Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (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 Agreement upon request.


**I. ENTIRE AGREEMENT**

This Agreement, including Attachment I, which is attached hereto and incorporated by reference, 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 Agreement not expressly set forth herein are of no force or effect. This Agreement 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 Agreement and signs the same of its own free will.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, County and City have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.

**SAN BERNARDINO COUNTY**


By:  \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name: \_\_\_\_\_  
*(Print or type name of person signing contract)*

Title: Chief Financial Officer  
*(Print or Type)*

Dated: \_\_\_\_\_

**CITY OF MONTCLAIR**

By:  \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*


Name: Javier John Dutrey  
*(Print or type name of person signing contract)*

Title: Mayor  
*(Print or Type)*

Dated: \_\_\_\_\_

Address 5111 Benito Street  
Montclair, CA 91763


**ATTEST**

By:  \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name: Andrea Myrick  
*(Print or type name of person signing contract)*

Title: City Clerk  
*(Print or Type)*

**APPROVED AS TO FORM**

By:  \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Name: Diane Robbins  
*(Print or type name of person signing contract)*


Title: City Attorney  
*(Print or Type)*


**FOR COUNTY USE ONLY**


Approved as to Legal Form

Reviewed for Contract Compliance

Reviewed/Approved by Department

 \_\_\_\_\_  
Charles Phan, Deputy County Counsel

 \_\_\_\_\_

 \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# ATTACHMENT I

## EXHIBIT E

### List of Opioid Remediation Uses

#### **Schedule A Core Strategies**

States and Qualifying Block Grantees shall choose from among the abatement strategies listed in **Schedule B**. However, priority shall be given to the following core abatement strategies (“*Core Strategies*”).<sup>14</sup>

- A. **NALOXONE OR OTHER FDA-APPROVED DRUG TO REVERSE OPIOID OVERDOSES**
  - 1. Expand training for first responders, schools, community support groups and families; and
  - 2. Increase distribution to individuals who are uninsured or whose insurance does not cover the needed service.
  
- B. **MEDICATION-ASSISTED TREATMENT (“MAT”) DISTRIBUTION AND OTHER OPIOID-RELATED TREATMENT**
  - 1. Increase distribution of MAT to individuals who are uninsured or whose insurance does not cover the needed service;
  - 2. Provide education to school-based and youth-focused programs that discourage or prevent misuse;
  - 3. Provide MAT education and awareness training to healthcare providers, EMTs, law enforcement, and other first responders; and
  - 4. Provide treatment and recovery support services such as residential and inpatient treatment, intensive outpatient treatment, outpatient therapy or counseling, and recovery housing that allow or integrate medication and with other support services.

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<sup>14</sup> As used in this Schedule A, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.

C. **PREGNANT & POSTPARTUM WOMEN**

1. Expand Screening, Brief Intervention, and Referral to Treatment (“*SBIRT*”) services to non-Medicaid eligible or uninsured pregnant women;
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for women with co-occurring Opioid Use Disorder (“*OUD*”) and other Substance Use Disorder (“*SUD*”)/Mental Health disorders for uninsured individuals for up to 12 months postpartum; and
3. Provide comprehensive wrap-around services to individuals with OUD, including housing, transportation, job placement/training, and childcare.

D. **EXPANDING TREATMENT FOR NEONATAL ABSTINENCE SYNDROME (“*NAS*”)**

1. Expand comprehensive evidence-based and recovery support for NAS babies;
2. Expand services for better continuum of care with infant-need dyad; and
3. Expand long-term treatment and services for medical monitoring of NAS babies and their families.

E. **EXPANSION OF WARM HAND-OFF PROGRAMS AND RECOVERY SERVICES**

1. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments;
2. Expand warm hand-off services to transition to recovery services;
3. Broaden scope of recovery services to include co-occurring SUD or mental health conditions;
4. Provide comprehensive wrap-around services to individuals in recovery, including housing, transportation, job placement/training, and childcare; and
5. Hire additional social workers or other behavioral health workers to facilitate expansions above.

F. **TREATMENT FOR INCARCERATED POPULATION**

1. Provide evidence-based treatment and recovery support, including MAT for persons with OUD and co-occurring SUD/MH disorders within and transitioning out of the criminal justice system; and
2. Increase funding for jails to provide treatment to inmates with OUD.

G. **PREVENTION PROGRAMS**

1. Funding for media campaigns to prevent opioid use (similar to the FDA's "Real Cost" campaign to prevent youth from misusing tobacco);
2. Funding for evidence-based prevention programs in schools;
3. Funding for medical provider education and outreach regarding best prescribing practices for opioids consistent with the 2016 CDC guidelines, including providers at hospitals (academic detailing);
4. Funding for community drug disposal programs; and
5. Funding and training for first responders to participate in pre-arrest diversion programs, post-overdose response teams, or similar strategies that connect at-risk individuals to behavioral health services and supports.

H. **EXPANDING SYRINGE SERVICE PROGRAMS**

1. Provide comprehensive syringe services programs with more wrap-around services, including linkage to OUD treatment, access to sterile syringes and linkage to care and treatment of infectious diseases.

I. **EVIDENCE-BASED DATA COLLECTION AND RESEARCH ANALYZING THE EFFECTIVENESS OF THE ABATEMENT STRATEGIES WITHIN THE STATE**

**Schedule B  
Approved Uses**

Support treatment of Opioid Use Disorder (OUD) and any co-occurring Substance Use Disorder or Mental Health (SUD/MH) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

PART ONE: TREATMENT

**A. TREAT OPIOID USE DISORDER (OUD)**

**Support treatment of Opioid Use Disorder (“OUD”) and any co-occurring Substance Use Disorder or Mental Health (“SUD/MH”) conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:<sup>15</sup>**

1. Expand availability of treatment for OUD and any co-occurring SUD/MH conditions, including all forms of Medication-Assisted **Treatment (“MAT”)** approved by the U.S. Food and Drug Administration.
2. Support and reimburse evidence-based services that adhere to the American **Society of Addiction Medicine (“ASAM”) continuum of care for OUD and any co-occurring SUD/MH conditions.**
3. Expand telehealth to increase access to treatment for OUD and any co-occurring SUD/MH conditions, including MAT, as well as counseling, psychiatric support, and other treatment and recovery support services.
4. **Improve oversight of Opioid Treatment Programs (“OTPs”)** to assure evidence-based or evidence-informed practices such as adequate methadone dosing and low threshold approaches to treatment.
5. Support mobile intervention, treatment, and recovery services, offered by qualified professionals and service providers, such as peer recovery coaches, for persons with OUD and any co-occurring SUD/MH conditions and for persons who have experienced an opioid overdose.
6. Provide treatment of trauma for individuals with OUD (*e.g.*, violence, sexual assault, human trafficking, or adverse childhood experiences) and family members (*e.g.*, surviving family members after an overdose or overdose fatality), and training of health care personnel to identify and address such trauma.
7. Support evidence-based withdrawal management services for people with OUD and any co-occurring mental health conditions.

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<sup>15</sup> As used in this Schedule B, words like “expand,” “fund,” “provide” or the like shall not indicate a preference for new or existing programs.



8. Provide training on MAT for health care providers, first responders, students, or other supporting professionals, such as peer recovery coaches or recovery outreach specialists, including telementoring to assist community-based providers in rural or underserved areas.
9. Support workforce development for addiction professionals who work with persons with OUD and any co-occurring SUD/MH conditions.
10. Offer fellowships for addiction medicine specialists for direct patient care, instructors, and clinical research for treatments.
11. Offer scholarships and supports for behavioral health practitioners or workers involved in addressing OUD and any co-occurring SUD/MH or mental health conditions, including, but not limited to, training, scholarships, fellowships, loan repayment programs, or other incentives for providers to work in rural or underserved areas.
12. Provide funding and training for clinicians to obtain a waiver under the federal Drug Addiction Treatment Act of 2000 (“DATA 2000”) to prescribe MAT for OUD, and provide technical assistance and professional support to clinicians who have obtained a DATA 2000 waiver.
13. Disseminate of web-based training curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service—Opioids web-based training curriculum and motivational interviewing.
14. Develop and disseminate new curricula, such as the American Academy of Addiction Psychiatry’s Provider Clinical Support Service for Medication—Assisted Treatment.

**B. SUPPORT PEOPLE IN TREATMENT AND RECOVERY**

Support people in recovery from OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the programs or strategies that:

1. Provide comprehensive wrap-around services to individuals with OUD and any co-occurring SUD/MH conditions, including housing, transportation, education, job placement, job training, or childcare.
2. Provide the full continuum of care of treatment and recovery services for OUD and any co-occurring SUD/MH conditions, including supportive housing, peer support services and counseling, community navigators, case management, and connections to community-based services.
3. Provide counseling, peer-support, recovery case management and residential treatment with access to medications for those who need it to persons with OUD and any co-occurring SUD/MH conditions.

4. Provide access to housing for people with OUD and any co-occurring SUD/MH conditions, including supportive housing, recovery housing, housing assistance programs, training for housing providers, or recovery housing programs that allow or integrate FDA-approved medication with other support services.
5. Provide community support services, including social and legal services, to assist in deinstitutionalizing persons with OUD and any co-occurring SUD/MH conditions.
6. Support or expand peer-recovery centers, which may include support groups, social events, computer access, or other services for persons with OUD and any co-occurring SUD/MH conditions.
7. Provide or support transportation to treatment or recovery programs or services for persons with OUD and any co-occurring SUD/MH conditions.
8. Provide employment training or educational services for persons in treatment for or recovery from OUD and any co-occurring SUD/MH conditions.
9. Identify successful recovery programs such as physician, pilot, and college recovery programs, and provide support and technical assistance to increase the number and capacity of high-quality programs to help those in recovery.
10. Engage non-profits, faith-based communities, and community coalitions to support people in treatment and recovery and to support family members in their efforts to support the person with OUD in the family.
11. Provide training and development of procedures for government staff to appropriately interact and provide social and other services to individuals with or in recovery from OUD, including reducing stigma.
12. Support stigma reduction efforts regarding treatment and support for persons with OUD, including reducing the stigma on effective treatment.
13. Create or support culturally appropriate services and programs for persons with OUD and any co-occurring SUD/MH conditions, including new Americans.
14. Create and/or support recovery high schools.
15. Hire or train behavioral health workers to provide or expand any of the services or supports listed above.

**C. CONNECT PEOPLE WHO NEED HELP TO THE HELP THEY NEED  
(CONNECTIONS TO CARE)**

Provide connections to care for people who have—or are at risk of developing—OUD and any co-occurring SUD/MH conditions through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Ensure that health care providers are screening for OUD and other risk factors and know how to appropriately counsel and treat (or refer if necessary) a patient for OUD treatment.
2. Fund SBIRT programs to reduce the transition from use to disorders, including SBIRT services to pregnant women who are uninsured or not eligible for Medicaid.
3. Provide training and long-term implementation of SBIRT in key systems (health, schools, colleges, criminal justice, and probation), with a focus on youth and young adults when transition from misuse to opioid disorder is common.
4. Purchase automated versions of SBIRT and support ongoing costs of the technology.
5. Expand services such as navigators and on-call teams to begin MAT in hospital emergency departments.
6. Provide training for emergency room personnel treating opioid overdose patients on post-discharge planning, including community referrals for MAT, recovery case management or support services.
7. Support hospital programs that transition persons with OUD and any co-occurring SUD/MH conditions, or persons who have experienced an opioid overdose, into clinically appropriate follow-up care through a bridge clinic or similar approach.
8. Support crisis stabilization centers that serve as an alternative to hospital emergency departments for persons with OUD and any co-occurring SUD/MH conditions or persons that have experienced an opioid overdose.
9. Support the work of Emergency Medical Systems, including peer support specialists, to connect individuals to treatment or other appropriate services following an opioid overdose or other opioid-related adverse event.
10. Provide funding for peer support specialists or recovery coaches in emergency departments, detox facilities, recovery centers, recovery housing, or similar settings; offer services, supports, or connections to care to persons with OUD and any co-occurring SUD/MH conditions or to persons who have experienced an opioid overdose.
11. Expand warm hand-off services to transition to recovery services.
12. Create or support school-based contacts that parents can engage with to seek immediate treatment services for their child; and support prevention, intervention, treatment, and recovery programs focused on young people.
13. Develop and support best practices on addressing OUD in the workplace.

14. Support assistance programs for health care providers with OUD.
15. Engage non-profits and the faith community as a system to support outreach for treatment.
16. Support centralized call centers that provide information and connections to appropriate services and supports for persons with OUD and any co-occurring SUD/MH conditions.

**D. ADDRESS THE NEEDS OF CRIMINAL JUSTICE-INVOLVED PERSONS**

Address the needs of persons with OUD and any co-occurring SUD/MH conditions who are involved in, are at risk of becoming involved in, or are transitioning out of the criminal justice system through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:

1. Support pre-arrest or pre-arraignment diversion and deflection strategies for persons with OUD and any co-occurring SUD/MH conditions, including established strategies such as:
  1. Self-referral strategies such as the Angel Programs or the Police Assisted **Addiction Recovery Initiative (“PAAR”)**;
  2. Active outreach strategies such as the Drug Abuse Response Team (“**DART**”) model;
  3. **“Naloxone Plus” strategies, which work to ensure that individuals who have received naloxone to reverse the effects of an overdose are then linked to treatment programs or other appropriate services;**
  4. Officer prevention strategies, such as the Law Enforcement Assisted **Diversion (“LEAD”)** model;
  5. Officer intervention strategies such as the Leon County, Florida Adult Civil Citation Network or the Chicago Westside Narcotics Diversion to Treatment Initiative; or
  6. Co-responder and/or alternative responder models to address OUD-related 911 calls with greater SUD expertise.
2. Support pre-trial services that connect individuals with OUD and any co-occurring SUD/MH conditions to evidence-informed treatment, including MAT, and related services.
3. Support treatment and recovery courts that provide evidence-based options for persons with OUD and any co-occurring SUD/MH conditions.

4. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are incarcerated in jail or prison.
5. Provide evidence-informed treatment, including MAT, recovery support, harm reduction, or other appropriate services to individuals with OUD and any co-occurring SUD/MH conditions who are leaving jail or prison or have recently left jail or prison, are on probation or parole, are under community corrections supervision, or are in re-entry programs or facilities.
6. **Support critical time interventions (“CTP”), particularly for individuals living with dual-diagnosis OUD/serious mental illness, and services for individuals who face immediate risks and service needs and risks upon release from correctional settings.**
7. Provide training on best practices for addressing the needs of criminal justice-involved persons with OUD and any co-occurring SUD/MH conditions to law enforcement, correctional, or judicial personnel or to providers of treatment, recovery, harm reduction, case management, or other services offered in connection with any of the strategies described in this section.

**E. ADDRESS THE NEEDS OF PREGNANT OR PARENTING WOMEN AND THEIR FAMILIES, INCLUDING BABIES WITH NEONATAL ABSTINENCE SYNDROME**

Address the needs of pregnant or parenting women with OUD and any co-occurring SUD/MH conditions, and the needs of their families, including babies with neonatal **abstinence syndrome (“NAS”), through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, those that:**

1. Support evidence-based or evidence-informed treatment, including MAT, recovery services and supports, and prevention services for pregnant women—or women who could become pregnant—who have OUD and any co-occurring SUD/MH conditions, and other measures to educate and provide support to families affected by Neonatal Abstinence Syndrome.
2. Expand comprehensive evidence-based treatment and recovery services, including MAT, for uninsured women with OUD and any co-occurring SUD/MH conditions for up to 12 months postpartum.
3. Provide training for obstetricians or other healthcare personnel who work with pregnant women and their families regarding treatment of OUD and any co-occurring SUD/MH conditions.
4. Expand comprehensive evidence-based treatment and recovery support for NAS babies; expand services for better continuum of care with infant-need dyad; and expand long-term treatment and services for medical monitoring of NAS babies and their families.

5. Provide training to health care providers who work with pregnant or parenting women on best practices for compliance with federal requirements that children born with NAS get referred to appropriate services and receive a plan of safe care.
6. Provide child and family supports for parenting women with OUD and any co-occurring SUD/MH conditions.
7. Provide enhanced family support and child care services for parents with OUD and any co-occurring SUD/MH conditions.
8. Provide enhanced support for children and family members suffering trauma as a result of addiction in the family; and offer trauma-informed behavioral health treatment for adverse childhood events.
9. Offer home-based wrap-around services to persons with OUD and any co-occurring SUD/MH conditions, including, but not limited to, parent skills training.
10. **Provide support for Children’s Services**—Fund additional positions and services, including supportive housing and other residential services, relating to children being removed from the home and/or placed in foster care due to custodial opioid use.

PART TWO: PREVENTION
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**F. PREVENT OVER-PRESCRIBING AND ENSURE APPROPRIATE PRESCRIBING AND DISPENSING OF OPIOIDS**

Support efforts to prevent over-prescribing and ensure appropriate prescribing and dispensing of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding medical provider education and outreach regarding best prescribing practices for opioids consistent with the Guidelines for Prescribing Opioids for Chronic Pain from the U.S. Centers for Disease Control and Prevention, including providers at hospitals (academic detailing).
2. Training for health care providers regarding safe and responsible opioid prescribing, dosing, and tapering patients off opioids.
3. Continuing Medical Education (CME) on appropriate prescribing of opioids.
4. Providing Support for non-opioid pain treatment alternatives, including training providers to offer or refer to multi-modal, evidence-informed treatment of pain.
5. Supporting enhancements or improvements to Prescription Drug Monitoring Programs (“PDMPs”), **including**, but not limited to, improvements that:

1. Increase the number of prescribers using PDMPs;
2. Improve point-of-care decision-making by increasing the quantity, quality, or format of data available to prescribers using PDMPs, by improving the interface that prescribers use to access PDMP data, or both; or
3. Enable states to use PDMP data in support of surveillance or intervention strategies, including MAT referrals and follow-up for individuals identified within PDMP data as likely to experience OUD in a manner that complies with all relevant privacy and security laws and rules.
6. Ensuring PDMPs incorporate available overdose/naloxone deployment data, **including the United States Department of Transportation’s Emergency Medical Technician overdose database** in a manner that complies with all relevant privacy and security laws and rules.
7. Increasing electronic prescribing to prevent diversion or forgery.
8. Educating dispensers on appropriate opioid dispensing.

**G. PREVENT MISUSE OF OPIOIDS**

Support efforts to discourage or prevent misuse of opioids through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Funding media campaigns to prevent opioid misuse.
2. Corrective advertising or affirmative public education campaigns based on evidence.
3. Public education relating to drug disposal.
4. Drug take-back disposal or destruction programs.
5. Funding community anti-drug coalitions that engage in drug prevention efforts.
6. Supporting community coalitions in implementing evidence-informed prevention, such as reduced social access and physical access, stigma reduction—including staffing, educational campaigns, support for people in treatment or recovery, or training of coalitions in evidence-informed implementation, including the Strategic Prevention Framework developed by the U.S. Substance Abuse and **Mental Health Services Administration (“SAMHSA”)**.
7. Engaging non-profits and faith-based communities as systems to support prevention.

8. Funding evidence-based prevention programs in schools or evidence-informed school and community education programs and campaigns for students, families, school employees, school athletic programs, parent-teacher and student associations, and others.
9. School-based or youth-focused programs or strategies that have demonstrated effectiveness in preventing drug misuse and seem likely to be effective in preventing the uptake and use of opioids.
10. Create or support community-based education or intervention services for families, youth, and adolescents at risk for OUD and any co-occurring SUD/MH conditions.
11. Support evidence-informed programs or curricula to address mental health needs of young people who may be at risk of misusing opioids or other drugs, including emotional modulation and resilience skills.
12. Support greater access to mental health services and supports for young people, including services and supports provided by school nurses, behavioral health workers or other school staff, to address mental health needs in young people that (when not properly addressed) increase the risk of opioid or another drug misuse.

**H. PREVENT OVERDOSE DEATHS AND OTHER HARMS (HARM REDUCTION)**

Support efforts to prevent or reduce overdose deaths or other opioid-related harms through evidence-based or evidence-informed programs or strategies that may include, but are not limited to, the following:

1. Increased availability and distribution of naloxone and other drugs that treat overdoses for first responders, overdose patients, individuals with OUD and their friends and family members, schools, community navigators and outreach workers, persons being released from jail or prison, or other members of the general public.
2. Public health entities providing free naloxone to anyone in the community.
3. Training and education regarding naloxone and other drugs that treat overdoses for first responders, overdose patients, patients taking opioids, families, schools, community support groups, and other members of the general public.
4. Enabling school nurses and other school staff to respond to opioid overdoses, and provide them with naloxone, training, and support.
5. Expanding, improving, or developing data tracking software and applications for overdoses/naloxone revivals.
6. Public education relating to emergency responses to overdoses.



7. Public education relating to immunity and Good Samaritan laws.
8. Educating first responders regarding the existence and operation of immunity and Good Samaritan laws.
9. Syringe service programs and other evidence-informed programs to reduce harms associated with intravenous drug use, including supplies, staffing, space, peer support services, referrals to treatment, fentanyl checking, connections to care, and the full range of harm reduction and treatment services provided by these programs.
10. Expanding access to testing and treatment for infectious diseases such as HIV and Hepatitis C resulting from intravenous opioid use.
11. Supporting mobile units that offer or provide referrals to harm reduction services, treatment, recovery supports, health care, or other appropriate services to persons that use opioids or persons with OUD and any co-occurring SUD/MH conditions.
12. Providing training in harm reduction strategies to health care providers, students, peer recovery coaches, recovery outreach specialists, or other professionals that provide care to persons who use opioids or persons with OUD and any co-occurring SUD/MH conditions.
13. Supporting screening for fentanyl in routine clinical toxicology testing.

<b>PART THREE: OTHER STRATEGIES</b>
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**I. FIRST RESPONDERS**

In addition to items in section C, D and H relating to first responders, support the following:

1. Education of law enforcement or other first responders regarding appropriate practices and precautions when dealing with fentanyl or other drugs.
2. Provision of wellness and support services for first responders and others who experience secondary trauma associated with opioid-related emergency events.

**J. LEADERSHIP, PLANNING AND COORDINATION**

Support efforts to provide leadership, planning, coordination, facilitations, training and technical assistance to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, the following:

1. Statewide, regional, local or community regional planning to identify root causes of addiction and overdose, goals for reducing harms related to the opioid epidemic, and areas and populations with the greatest needs for treatment

intervention services, and to support training and technical assistance and other strategies to abate the opioid epidemic described in this opioid abatement strategy list.

2. A dashboard to (a) share reports, recommendations, or plans to spend opioid settlement funds; (b) to show how opioid settlement funds have been spent; (c) to report program or strategy outcomes; or (d) to track, share or visualize key opioid- or health-related indicators and supports as identified through collaborative statewide, regional, local or community processes.
3. Invest in infrastructure or staffing at government or not-for-profit agencies to support collaborative, cross-system coordination with the purpose of preventing overprescribing, opioid misuse, or opioid overdoses, treating those with OUD and any co-occurring SUD/MH conditions, supporting them in treatment or recovery, connecting them to care, or implementing other strategies to abate the opioid epidemic described in this opioid abatement strategy list.
4. Provide resources to staff government oversight and management of opioid abatement programs.

#### **K. TRAINING**

In addition to the training referred to throughout this document, support training to abate the opioid epidemic through activities, programs, or strategies that may include, but are not limited to, those that:

1. Provide funding for staff training or networking programs and services to improve the capability of government, community, and not-for-profit entities to abate the opioid crisis.
2. Support infrastructure and staffing for collaborative cross-system coordination to prevent opioid misuse, prevent overdoses, and treat those with OUD and any co-occurring SUD/MH conditions, or implement other strategies to abate the opioid epidemic described in this opioid abatement strategy list (*e.g.*, health care, primary care, pharmacies, PDMPs, etc.).

#### **L. RESEARCH**

Support opioid abatement research that may include, but is not limited to, the following:

1. Monitoring, surveillance, data collection and evaluation of programs and strategies described in this opioid abatement strategy list.
2. Research non-opioid treatment of chronic pain.
3. Research on improved service delivery for modalities such as SBIRT that demonstrate promising but mixed results in populations vulnerable to opioid use disorders.

4. Research on novel harm reduction and prevention efforts such as the provision of fentanyl test strips.
5. Research on innovative supply-side enforcement efforts such as improved detection of mail-based delivery of synthetic opioids.
6. Expanded research on swift/certain/fair models to reduce and deter opioid misuse within criminal justice populations that build upon promising approaches used to address other substances (*e.g.*, Hawaii HOPE and Dakota 24/7).
7. Epidemiological surveillance of OUD-related behaviors in critical populations, including individuals entering the criminal justice system, including, but not limited to approaches modeled on the Arrestee Drug Abuse Monitoring (“ADAM”) system.
8. Qualitative and quantitative research regarding public health risks and harm reduction opportunities within illicit drug markets, including surveys of market participants who sell or distribute illicit opioids.
9. Geospatial analysis of access barriers to MAT and their association with treatment engagement and treatment outcomes.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	COV100/CYC125
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	A. MYRICK
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-3339 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES FOR THE PERIOD OF APRIL 4, 2022, THROUGH MAY 4, 2022		

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**REASON FOR CONSIDERATION:** The City Council’s adoption of Resolution No. 21-3339 would extend the City’s remote public meeting procedures under AB 361 for an additional 30 days, expiring May 4, 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. 22-3339.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3339 making factual findings in compliance with AB 361 for the continuation of teleconferencing during public health emergencies for the period of April 4, 2022, through May 4, 2022.

RESOLUTION NO. 22-3339

**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 APRIL 4, 2022, THROUGH MAY 4, 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 and Community Activities Commissions 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 and Community Activities Commissions:

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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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 and Community Activities Commissions 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, or the Montclair Planning and Community Activities Commissions to the public by phone or by internet, the Montclair City Council, its committees, and the Montclair Planning and Community Activities Commissions 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 and Community Activities Commissions:** The Montclair Planning Commission and the Montclair Community Activities 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 May 4, 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, 2022.

**ATTEST:**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3339 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, 2022, 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

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	STA700A
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	PUBLIC WORKS
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	M. HEREDIA
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-3345 APPROVING THE TREE CITY USA APPLICATION FOR 2022 AND AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO SIGN THE APPLICATION		

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**REASON FOR CONSIDERATION:** The City is required to meet certain standards to obtain the Tree City USA designation and must submit an application to maintain the status each year. The City Council's adoption of the proposed Resolution, as well as the issuance of a Proclamation declaring April 29, 2022 as Arbor Day in the City of Montclair at the next meeting, will satisfy the final requirements of the application.

The City Council is requested to consider adoption of Resolution No. 22-3345 approving the Tree City USA Application for 2022 and authorizing the Public Works Director to sign the application.

**BACKGROUND:** As one of the world's largest operating conservation foundations, the Arbor Day Foundation, through its members, partners, and programs, educates and engages stakeholders and communities across the globe to involve themselves in its mission of planting, nurturing and celebrating trees.

Beginning in 1998, the City of Montclair was designated a Tree City USA community. This is an important designation because preference is often given to Tree City USA communities when allocations of grant money are available for trees or forestry program. The Arbor Day Foundation's standards for becoming a Tree City USA community are attached. The City meets the requirements to be recognized as a Tree City USA community based on these standards as follows:

- **Standard 1 – Tree Board or Department and/or Chair/City Manager representation**  
The Public Works Department oversees the City's Forestry Program and the Public Works Director can sign the application with the City Council's adoption of Resolution No. 22-3345.
- **Standard 2 – Community Tree Ordinance**  
The City Council approved the City of Montclair Tree Policy on January 5, 2004. The policy provides for the protection and preservation of trees planted within the City's rights-of-way and at City facilities.
- **Standard 3 – Forestry Program with an annual budget of at least \$2 per capita**  
The City spends a total of \$145,512 annually for the maintenance of trees including planting and tree removal. In the last five years, the City has planted 174 trees.
- **Standard 4 – An Arbor Day Observance and Proclamation**  
The City will observe Friday, April 29, 2022 as Arbor Day. A proclamation will be presented at the April 18, 2022 City Council meeting.



**FISCAL IMPACT:** There would be no direct fiscal impact on the General Fund related to the City Council's adoption of Resolution No. 22-3345.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3345 approving the Tree City USA application for 2022 and authorizing the Director of Public Works to sign the application.

## Tree City USA Standards

To qualify as a Tree City USA community, you must meet four standards established by the Arbor Day Foundation and the National Association of State Foresters. These standards were established to ensure that every qualifying community would have a viable tree management program and that no community would be excluded because of size.

### Four Standards for Tree City USA Recognition

#### STANDARD 1

##### **A Tree Board or Department**

Someone must be legally responsible for the care of all trees on city- or town-owned property. By delegating tree care decisions to a professional forester, arborist, city department, citizen-led tree board or some combination, city leaders determine who will perform necessary tree work. The public will also know who is accountable for decisions that impact community trees. Often, both professional staff and an advisory tree board are established, which is a good goal for most communities.

The formation of a tree board often stems from a group of citizens. In some cases a mayor or city officials have started the process. Either way, the benefits are immense. Involving residents and business owners creates wide awareness of what trees do for the community and provides broad support for better tree care.

#### STANDARD 2

##### **A Tree Care Ordinance**

A public tree care ordinance forms the foundation of a city's tree care program. It provides an opportunity to set good policy and back it with the force of law when necessary.

A key section of a qualifying ordinance is one that establishes the tree board or forestry department—or both—and gives one of them the responsibility for public tree care (as reflected in Standard 1). It should also assign the task of crafting and implementing a plan of work or for documenting annual tree care activities.

Qualifying ordinances will also provide clear guidance for planting, maintaining and/or removing trees from streets, parks and other public spaces as well as activities that are required or prohibited. Beyond that, the ordinance should be flexible enough to fit the needs and circumstances of the particular community.

For tips and a checklist of important items to consider in writing or improving a tree ordinance, see [Tree City USA Bulletin #9](#).

#### STANDARD 3

##### **A Community Forestry Program With an Annual Budget of at Least \$2 Per Capita**

City trees provide many benefits—clean air, clean water, shade and beauty to name a few—but they also require an investment to remain healthy and sustainable. By providing support at or above the \$2 per capita minimum, a community demonstrates its commitment to grow and tend these valuable public assets. Budgets and expenditures require planning and accountability, which are fundamental to the long-term health of the tree canopy and the Tree City USA program.

To meet this standard each year, the community must document at least \$2 per capita toward the planting, care and removal of city trees—and the planning efforts to make those things happen. At first this may seem like an impossible barrier to some communities. However, a little investigation usually reveals that more than this amount is already being spent on tree care. If not, this may signal serious neglect that will cost far more in the long run. In such a case, working toward Tree City USA recognition can be used to reexamine the community's budget priorities and redirect funds to properly care for its tree resources before it is too late.

#### STANDARD 4

##### **An Arbor Day Observance and Proclamation**

An effective program for community trees would not be complete without an annual Arbor Day ceremony. Citizens join together to celebrate the benefits of community trees and the work accomplished to plant and maintain them. By passing and reciting an official Arbor Day proclamation, public officials demonstrate their support for the community tree program and complete the requirements for becoming a Tree City USA!

This is the least challenging—and probably most enjoyable—standard to meet. An Arbor Day celebration can be simple and brief or an all-day or all-week observation. It can include a tree planting event, tree care activities or an award ceremony that honors leading tree planters. For children, Arbor Day may be their only exposure to the green world or a springboard to discussions about the complex issue of environmental quality.

The benefits of Arbor Day go far beyond the shade and beauty of new trees for the next generation. Arbor Day is a golden opportunity for publicity and to educate homeowners about proper tree care. Utility companies can join in to promote planting small trees beneath power lines or being careful when digging. Fire prevention messaging can also be worked into the event, as can conservation education about soil erosion or the need to protect wildlife habitat.

RESOLUTION NO. 22-3345

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING THE TREE CITY USA APPLICATION FOR 2022 AND AUTHORIZING THE PUBLIC WORKS DIRECTOR TO SIGN THE APPLICATION

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska and Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires, and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal; and

WHEREAS, the City of Montclair was previously recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting practices.

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

SECTION 1. The City of Montclair urges all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

SECTION 2. Friday, April 29, 2022 shall be declared Arbor Day in the City of Montclair.

SECTION 3. The City Council hereby authorizes the Public Works Director to execute the Tree City USA Application.

APPROVED AND ADOPTED this XX day of XX, 2022.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3345 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, 2022, 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

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<b>DATE:</b>	APRIL 4, 2022	<b>FILE I.D.:</b>	PER775/CYC145
<b>SECTION:</b>	BUSINESS ITEMS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	A	<b>PREPARER:</b>	E. STARR
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-3344 DISAPPROVING AND CENSURING CERTAIN CONDUCT AND BEHAVIOR OF MONTCLAIR CITY COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING PROTECTIVE ACTIONS TAKEN AND RECOMMENDED BY THE CITY MANAGER		

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**REASON FOR CONSIDERATION:** At the March 21, 2022, meeting of the City Council, discussion occurred to consider censuring Council Member Benjamin Lopez for certain conduct and behavior.

The censure discussion was in response to the following:

1. Findings made by an independent workplace investigator sustaining the allegations of certain employees that Council Member Benjamin Lopez interacted with them in an inappropriate manner; and
2. The filing of separate verified complaints in lawsuits by the same two employees containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez.

The City Council's discussion on censure included (i) the filing of complaints by certain employees; (ii) information regarding the hiring of a workplace investigator; (iii) actions taken by the City Manager to protect employees of the City of Montclair, including restrictions imposed on Council Member Lopez; (iv) other prohibitions the City Council may consider imposing on Council Member Lopez; and (v) a discussion of the censure process.

Following conclusion of the censure discussion, the City Council voted to approve directing staff to draft a Resolution of Censure and place it on the April 4, 2022, meeting of the City Council for consideration.

A copy of Resolution No. 22-3339 is attached for City Council consideration.

**BACKGROUND: *Employees' reporting inappropriate interaction.*** After certain employees of the City reported to City management allegations of what they believed to be inappropriate actions by Council Member Benjamin Lopez as set forth above, the City Manager determined there was an immediate need to request the hiring of an independent workplace investigator and implement a number of protective workplace measures to protect the employees of the organization. Protective measures gained greater relevance and urgency after an independent workplace investigator presented findings that sustained the allegations made by the employees.

***Hiring of workplace investigator.*** At its meeting of August 2, 2021, the City Council approved Agreement No. 21-47 with EXTTI for professional workplace services in expert testimony, training, and investigations. The EXTTI investigator, an independent workplace investigator — certified by the Association of Workplace Investigators — conducted an investigation into the allegations made by certain employees of the City,

and sustained the allegations. The investigator provided the City Council with an oral presentation of the investigation and findings reached in closed session at the March 1, 2022, Special Meeting.

The workplace investigation sustained allegations that Council Member Benjamin Lopez, as a private individual and outside the course and scope of his duties, responsibilities, and performance as a member of the City Council did (i) conduct an extended conversation with an employee about his sexual orientation; and (ii) intentionally hide his identity from a different employee when they communicated on social media dating sites, which included the sharing of sexually explicit content and photographs.

***City Manager's duty to protect employees.*** Pursuant to Chapter 2.08 of the Montclair Municipal Code, the City Manager is officially charged with supervising the employees of the organization. Conversely, City Council members have no such charge and should not become involved with individual employees. Any direct involvement in personnel-related matters is only to be contemplated by the whole of the City Council, and even then as a matter of consideration related to employees over whom the City Council has appointing authority — the City Manager and City Attorney.

The City Manager, in his leadership role for all employees of the organization, implements procedures and programs in compliance with state and federal laws designed to protect employees from harassment and discriminatory treatment.

When allegations of harassment, discrimination, bullying or retaliation allegedly originate with a member of the City Council, the City Manager enacts decisions designed to protect employees from a repeat of such behavior, while remaining respectful of free speech, legislative prerogatives and the incumbent's continued exercise of Council authority.

***City Manager's protective actions.***

**Actions Taken by the City Manager to Protect Employees from Harassment, Discrimination, Bullying and Retaliation**

1. When certain employees (complainants) respectively brought their complaints regarding inappropriate interactions with Council Member Benjamin Lopez to the City Manager's attention, each complaint was treated with due seriousness, employees were offered organizational support, and referrals were made available through a third-party counseling service provided by the City.
2. Each employee was directed to preserve any evidence in his or her possession.
3. Each employee was advised of the following:
  - a) Through their respective labor group agreements, complaint and grievance processes have been established.
  - b) Employees have the right to file a complaint with the City.
  - c) Employee complaints are to be processed and treated with fairness and respect.
  - d) Employee class status based on sexual orientation, gender identity and expression, marital status, political affiliation and other classes are protected under Federal and State law.

- e) Any complaint, grievance or claim filed shall not be construed as a workplace violation or an egregious act against the City or any employee, officer or agent of the City.
  - f) Respective complaints would be handled discreetly, and with as much confidentiality as possible.
  - g) An independent workplace investigator would be hired to conduct an investigation into respective allegations, and no effort would be made by the City to conduct the investigation in house.
  - h) If a written investigation report were produced, the City would seek to keep the completed report confidential and redact employee identities where possible in the event the report is subject to disclosure through subpoena, discovery, or other judicial disclosure order.
  - i) The Montclair organization seeks to prevent, and takes seriously, any form of harassment, discrimination, bullying or retaliation against any employee by any other employee, officer or agent of the City. Steps taken by the City Manager are intended to protect employees from discrimination, harassment, bullying or retaliation within the organization. Furthermore, any form of harassment, discrimination, bullying or retaliation shall be dealt with through appropriate levels of training, direction, and discipline.
  - j) Complainants would not be subject to any adverse employment action related to the filing of their respective complaints or their cooperation in an investigation into their respective allegations, including the following adverse employment actions:
    - Termination;
    - Retaliation;
    - Discipline;
    - Reduction in pay;
    - Demotion;
    - Change in shift or work hours;
    - Change in job responsibilities not associated with advancement;
    - Isolation or ostracism;
    - Exclusion from meetings or functions;
    - Or any threat of the above.
4. Each employee was directed to separately meet with the Administrative Services/ Human Resources Director regarding the filing and processing of their respective complaints.
  5. Each complainant is permitted to conduct his or her daily assignments without restriction and in a manner, which, to the greatest degree possible, minimizes contact with Council Member Benjamin Lopez. In furtherance of this latter objective, each complainant is provided discretionary latitude regarding the performance of any duty that may place the employee in a position where in-person contact with Council Member Lopez may be unavoidable.

Options for discretionary latitude include the following:

- a) Excused attendance from meetings and other City activities;
- b) Temporary reassignment;
- c) Meeting attendance through Zoom or telephonically, rather than in-person;
- d) Telecommuting or work-at-home, when feasible; and
- e) Other proposed options.

The above discretionary measures are intended to avoid adverse employment actions that may hinder a complainant's performance of duties.

6. At different points during the course of the independent investigation into the employees' allegations, the City Attorney directed Council Member Benjamin Lopez to avoid all personal and professional interactions with the complainants.
7. An independent workplace investigator was hired to conduct an investigation into certain employee allegations of inappropriate interactions initiated by Council Member Benjamin Lopez.
8. Prior to and after filing their respective complaints, each complainant received scheduled promotions, above-average performance evaluations, and merit-based wage and benefit adjustments.
9. The City Manager regularly meets with each complainant to inquire about (i) any interactions or potential interactions with Council Member Benjamin Lopez; and (ii) any mistreatment from any employee, supervisor, manager, agent or officer of the City that may be directly or indirectly related to the nature of the harassing or discriminatory treatment, or stem from the filing of their respective complaints.
10. Supervisors are prohibited from taking any adverse employment action as it relates to the subject matter of any investigation, an employee's protected status, and/or the filing of any complaint or civil action. No employment-related matter, including those related to the filing of any complaint, the conduct of an investigation, or an employee's protected status shall be used as pretext for an adverse employment action.
11. Complainants are protected from, and shall not be subject to, any continued or future form of harassment, bullying, discrimination or retaliation as it relates to their protected status or their respective decisions to file complaints or civil actions.
12. There shall be no restrictions on a complainant's ability to professionally develop and advance in the Montclair organization.
13. Education is the best tool to prevent and eliminate harassment, discrimination bullying and retaliation in the workplace. California law requires employers with five or more employees to provide harassment prevention training to City Council Members, managers, supervisors and other designated employees every two years. Montclair complies with state training and education requirements.

Mandatory harassment prevention training is provided within six months of date of hire, promotion, appointment or election to office, and again every two years

thereafter. City Records indicate that each member of the City Council has received the required harassment prevention training.

Harassment prevention training has two objectives:

- a) Provide insight on how an employee can recognize harassment, discrimination, bullying and retaliation; and
  - b) Communicate with employees, officers, elected and appointed officials, and agents that unwelcome harassing conduct will not be tolerated, and no employee, officer, or agent of the City shall engage in any form of harassment, discrimination, bullying, retaliation, or creation of a hostile work environment.
14. The independent workplace investigator has sustained allegations made by certain employees; therefore, Council Member Benjamin Lopez will be required to recuse himself from voting on, and future involvement in, any personnel-related matter related to the complainants.
15. Upon the City Council's receipt of the oral report presented by the independent workplace investigator sustaining certain allegations, access restrictions to City facilities and other prohibitions were imposed on Council Member Benjamin Lopez. These restrictions were communicated to Council Member Lopez on March 3, 2022, and include the following:
- a) Access to all City-owned and operated facilities is restricted. This restriction includes removal of all entry authorizations related to external and internal electric doors at all City facilities.  
  
For the purpose of conducting City Council business, access is permitted to the following areas at City facilities during regular operating hours only:
    - Public areas of City facilities;
    - City Council Chambers and City Manager's Conference Room, or other designated locations controlled and operated by the City for scheduled meetings of the City Council; and
    - Other City meeting rooms and offices as required for the purpose and benefit of the City and by direct invite by the City Manager, or at Council Member Benjamin Lopez' request and upon approval by the City Manager.
  - b) Prohibition against one-on-one contact with employees of the City of Montclair, including the participation in ride-along events provided through the City's Code Enforcement, Public Works, Human Services, Police and Fire Departments.
  - c) Prohibition against overnight stays in public safety crew sleeping quarters.
  - d) Prohibition against the use of any locker room or exercise facilities owned and operated by the City and available to, or designated for use by, employees of the City.
  - e) In the proximity of complainants, Council Member Benjamin Lopez bears the burden and responsibility to avoid physical interaction and visual or spatial contact with the complainant(s).



- Employees shall be excused from performing their official duties if doing so brings them into contact with Council Member Benjamin Lopez, or shall be provided other accommodations as necessary to protect them.
- f) Prohibition against any continued or future form of harassment, bullying, discrimination or retaliation, including as it relates to each complainant's protected status or his or her respective decision to file a complaint or civil action.
- g) Removal of access to the City's Universal Shared Drive, where documents, photographs, and communications between employees are shared.
- Any specific City-related document requiring Council Member Benjamin Lopez' attention will be forwarded to him by the City Manager, City Attorney or City Clerk under separate communication. The City Clerk will arrange for the delivery of City Council agendas, mail and other relevant documents requiring Council Member Lopez' attention to his home, by email, or otherwise arrange for their pickup by Council Member Lopez or his representative in a public area at City Hall.
- h) All intra-agency email and text communications from Council Member Benjamin Lopez shall be directed only to City Council colleagues, the City Attorney or the City Manager, and to the City Clerk for inquires related to City Council agendas and elections only.
- i) Except as otherwise provided, Council Member Benjamin Lopez is prohibited from communicating in an official or personal capacity with any employee of the City of Montclair via electronic communications, social media, written correspondence, or other media.
- The City of Montclair has provided to Council Member Benjamin Lopez a City-owned and controlled laptop with Wi-Fi access for home use to conduct City business only. Upon request, a City-issued cell phone will also be provided to conduct City business only. Council Member Lopez was advised in writing that all information, texts, emails and actions conducted on City-provided equipment, including attorney-client communications, are discoverable by the City and its agents, and he is required to sign a disclosure form acknowledging the City's rights in this regard. Failure to not sign or return the disclosure form does not abrogate the City's legal right to discovery. Council Member Lopez was also advised in writing that any City-related work and communications conducted on personal electronic equipment are also discoverable by the City regardless of acknowledgement of the City's rights in this regard.

***Other prohibitions.*** In addition to the City Manager's protective measures outlined above and incorporated by reference into Resolution No. 22-3344, the City Council directed that the following measures be specifically incorporated into Resolution No. 22-3344, some of which are referenced under "***City Managers protective actions, 15.***", above and restated herein:

- a) That Council Member Benjamin Lopez is removed from all appointed City Council Committees; sub-committees of the City Council; City-sponsored committees including, but not limited to, social, event, recreation, and community-oriented committees; and inter-agency committees and boards involving City of Montclair representation.

- b) That Council Member Benjamin Lopez is prohibited from speaking on behalf of the City Council or representing the City in any capacity other than as authorized in the Montclair Municipal Code.
- c) That Council Member Benjamin Lopez shall refrain from one-on-one contact, either on a personal or professional level, with employees of the City of Montclair and shall be prohibited from participating in public safety ride-along events provided through the City's Code Enforcement, Police, Human Services, and Fire Departments.
- d) That Council Member Benjamin Lopez is prohibited from overnight stays in public safety crew sleeping quarters.
- e) That Council Member Benjamin Lopez is prohibited from the use of any locker room or exercise facilities owned and operated by the City and available to, or designated for use by, employees of the City.
- f) That Council Member Benjamin Lopez' access to the City's universal Z-Drive where documents, photographs and communications between employees of the City are shared is removed. Any specific City-related document requiring Council Member Benjamin Lopez' attention will be forwarded to him by the City Manager, City Attorney or City Clerk under separate communication. The City Clerk is directed to arrange for the delivery of City Council agendas and other City-related documents requiring Council Member Benjamin Lopez' attention to his home, by email, or otherwise arrange for their pickup by Council Member Benjamin Lopez or his representative in a public area at City Hall.
- g) All interagency email and text communications from Council Member Benjamin Lopez shall be directed only to City Council colleagues, the City Attorney or the City Manager, and to the City Clerk for purposes of City Council agendas and elections. Notwithstanding the foregoing, any communications concerning this matter and the two lawsuits filed by the two employees shall be between Council Member Benjamin Lopez' legal counsel and the City's defense counsel.
- h) Except as otherwise provided herein, Council Member Benjamin Lopez is prohibited from engaging in communications in an official or personal capacity with any employee of the City of Montclair via electronic communications, social media, and written correspondence or other media.
- i) That Council Member Benjamin Lopez is prohibited from City-paid/non-paid travel to conferences, meetings, training and/or other events where representation of the City is involved; and non-paid or paid travel provided through other public or private entities where representation of the City of Montclair is involved.
- j) That Council Member Benjamin Lopez is required to attend City-approved sexual harassment prevention training and other training as may be required by the City Manager. Training should occur within thirty (30) calendar days following adoption of this Resolution of Censure. Furthermore, such training shall be repeated annually, subject to scheduling by the City Manager.

- k) Other actions as may be considered and implemented, from time-to-time, as necessary to protect the employees of the City from harassment, discrimination, bullying, and/or retaliation.
- l) All ratified actions to remain in place until otherwise rescinded by the appropriate authority.

**Censure Action.** Based on the totality of events as discussed above, at the March 7, 2022 meeting of the City Council, a motion was made and adopted by a majority of the City Council to place on the March 21, 2022, City Council agenda a discussion to consider censuring Council Member Benjamin Lopez.

To aid in the understanding and discussion of the censure process, the following information is presented to the City Council:

1. **What is a Censure?** Censure is an official condemnation or reprimand of a public official – an authoritative expression of disapproval or blame, taken in open session, which is used to formally recognize and express disapproval of an incumbent’s actions. There is no state or federal statute defining the censure process. There is no fine or discipline associated with censure.
2. **Purpose of Censure.** Censure is used to demonstrate that the City Council does not condone or endorse an incumbent’s behavior or conduct, and that the City Council is taking steps to prevent the conduct from continuing. Censure serves as a statement to the public that certain behavior is unacceptable to the other Council Members. Censure is a form of self-policing for elected officials and adoption of a resolution of censure is within the authority of the City Council.
3. **Reason for Censure.** Examples of conduct commonly used as the basis for censuring include the following:
  - a) Breach of fiduciary duties.
  - b) Improper or offensive behavior or conduct toward other elected officers, employees, citizens or others.
  - c) Failure to disclose conflicts of interest.
  - d) Disruption of City Council meetings (e.g., overt hostility, profanity, intimidation, etc.).
  - e) Violations of law.
4. **Adoption of a Resolution of Censure.** A Resolution of Censure is adopted by majority approval of the City Council at a special or regular meeting at which a quorum of the governing board is present. The City Council may adopt a Resolution of Censure if there is substantial evidence in the record to support a City Council decision to censure a City Council incumbent. The Resolution of Censure should state the reasons for the Censure.
5. **Impact of Censure on an incumbent’s powers & authority.** Censure is a serious action. However, censure does not serve to remove an incumbent from office nor restrict the incumbent’s statutory powers and authority he/she has as a City Council member. A formal censure serves as a collective act of public reprimand, rebuke or disapproval, rendering the subject behavior unacceptable.

6. ***Due process.*** A City Council incumbent subject to censure is entitled to due process and an opportunity to be heard on, and respond to, the proposed Resolution of Censure. The City Attorney provided Council Member Lopez advance notice that the City Council would consider adoption of a Resolution of Censure at the April 4, 2022 City Council meeting.

**FISCAL IMPACT:** Adoption of a Resolution of Censure imposes no direct fiscal impact on the City's General Fund.

**RECOMMENDATION:** It is the prerogative of the City Council to consider adoption of Resolution No. 22-3344 disapproving and censuring certain conduct and behavior of City Council Member Benjamin Lopez and ratifying protective actions taken and recommended by the City Manager.

**RESOLUTION NO. 22-3344.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR DISAPPROVING AND CENSURING CERTAIN BEHAVIOR OF MONTCLAIR CITY COUNCIL MEMBER BENJAMIN LOPEZ AND RATIFYING ACTIONS TAKEN AND RECOMMENDED BY THE CITY MANAGER**

**WHEREAS**, the City Council of the City of Montclair has a duty to the residents and employees of the City to ensure that the laws of the United States and State of California are followed and the rules, regulations, policies and ordinances of the City are complied with, and that this duty is primary in the area of employer/employee relations; and

**WHEREAS**, it is essential for the effective governance of the City of Montclair for the public to have confidence in the integrity, dignity, competence, professionalism, decorum and behavior of its elected and appointed leaders and their fair, respectful, courteous and dignified treatment and regard for employees of the City of Montclair and members of the public; and

**WHEREAS**, it is also essential that members of the City Council demonstrate the highest level of professionalism and respect while in office and not behave or perform in a manner that is detrimental to the City or adverse to the City's interests; and

**WHEREAS**, California law requires that, within six months of election or appointment, elected representatives, managers, and supervisory employees are to undergo specialized training on how to recognize, avoid, and prevent hostile work environments, harassment, discrimination and retaliation; furthermore, this training must be repeated at least every two years, and City records show that each member of the City Council has received the specialized training; and

**WHEREAS**, at its meeting of August 2, 2021, the City Council approved Agreement No. 21-47 with EXTTI, Inc. for professional workplace services in expert testimony, training, and investigations; and

**WHEREAS**, the independent investigator conducted an investigation into allegations made by certain employees of the City concerning alleged inappropriate interactions by Council Member Benjamin Lopez, as referenced herein; and

**WHEREAS**, on March 1, 2022, the Montclair City Council was made aware of two verified complaints in lawsuits filed by two employees against both Council Member Benjamin Lopez and the City of Montclair containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez; and

**WHEREAS**, at a March 1, 2022 special meeting that adjourned to closed session, the independent investigator provided the City Council with an oral presentation of the investigation and the findings reached by the independent investigator; and

**WHEREAS**, at the meeting on March 1, 2022, the Montclair City Council duly considered and weighed information and evidence received through the oral presentation of the independently conducted workplace investigation; and

**WHEREAS**, the workplace investigation sustained allegations that Council Member Benjamin Lopez, as a private individual and outside the course and scope of his duties, responsibilities, and performance as a member of the City Council, did (1) conduct an extended conversation with one employee about his sexual orientation; and (2) intentionally hide his identity from another employee when they communicated on social media dating sites, and that their communication included sharing sexually explicit content and photographs; and

**WHEREAS**, at the March 21, 2022, meeting of the City Council, discussion occurred to consider censuring Council Member Benjamin Lopez for certain conduct and behavior, and the City Council's discussion on censure included (1) the filing of complaints by certain employees; (2) information regarding the hiring of a workplace investigator; (3) actions taken by the City Manager to protect employees of the City of Montclair, including restrictions imposed on Council Member Lopez; (4) other prohibitions the City Council may consider imposing on Council Member Lopez; and (5) a discussion of the censure process; and

**WHEREAS**, at the March 21, 2022 meeting, the City Council did adopt a motion that a Resolution of Censure of City Council Member Benjamin Lopez be prepared for City Council consideration at the April 4, 2022, City Council meeting; and

**WHEREAS**, the City Council finds that the interaction that Council Member Benjamin Lopez had with certain employees was reprehensible, inappropriate, abusive, and disrespectful and has brought disrepute to the City of Montclair and the Montclair City Council; and

**WHEREAS**, the City Council does not condone or approve of the type of conduct and behavior exhibited by Council Member Benjamin Lopez, and finds it necessary and prudent to declare its strong disapproval of such conduct and behavior; and

**WHEREAS**, an employer has a duty and obligation to prevent workplace conditions of harassment, discrimination, bullying and retaliation and the City of Montclair has a zero-tolerance policy against such behavior in the workplace; however, when such behavior reportedly originates with a member of a city council, state law provides no significant procedures for the discipline of a locally elected representative, effectively limiting a city council majority to censures, restrictions, and prohibitions that fall within the prerogative of the City Manager and the City Council majority; and

**WHEREAS**, in the matter before the City Council, and based on the nature of the allegations and findings reached by the investigator that sustained the allegations, together with the filing of two verified complaints in lawsuits by the same employees containing allegations of discrimination based on sexual orientation and unlawful sexual harassment against Council Member Benjamin Lopez, the City Council determines that there is sufficient cause to consider adoption of a Resolution of Censure; and

**WHEREAS**, the City Manager has the duty and responsibility to the City's employees to protect them from harassment, discrimination, bullying or retaliation, whether it is from a member of the public, another employee of the City, or from a member of the City Council; and

**WHEREAS**, the City Manager is also expected to take actions that, while respectful of free speech, legislative prerogatives, and the weighty duties and responsibilities of incumbent City Council members, are designed and intended to protect employees of the organization from harassment, discrimination, bullying and retaliation; and

**WHEREAS**, at the March 21, 2022, meeting of the City Council, the City Manager did enumerate the protective measures implemented upon notification by certain City employees of allegations of inappropriate interactions by Council Member Benjamin Lopez and, by reference to those protective measures, are incorporated herein; and

**WHEREAS**, on March 3, 2022, the City Manager provided Council Member Benjamin Lopez a documented set of "*Restrictions on Access to City Facilities and Prohibition Against Contact with City Employees*," a copy of which was transmitted to Council Member Benjamin Lopez via email and home delivery and, by reference to those documented set of restrictions issued, are incorporated herein; and

**WHEREAS**, the City Council determines that adoption of this Resolution of Censure is necessary to affirm that such conduct will not be tolerated and such conduct shall be prevented from being repeated.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Montclair, California, as follows:

**SECTION 1.** The City Council finds that the Recitals set forth above are true and correct.

**SECTION 2.** The City Council finds that Council Member Benjamin Lopez did engage in inappropriate interactions with certain employees of the City of Montclair.

**SECTION 3.** The City Council finds that Council Member Benjamin Lopez, as a private individual and acting outside the course and scope of his duties, responsibilities and performance as a member of the City Council of the City of Montclair, did engage in interactions with certain employees of the City which were inappropriate, abusive and disrespectful, and by his conduct and behavior brought disrepute to the City of Montclair and to the Montclair City Council.

**SECTION 4.** The City Council finds that this behavior and conduct, in addition to being improper, unprofessional, unacceptable, and detrimental to the City of Montclair, is reprehensible and that Council Member Benjamin Lopez was acting solely as an individual without any authorization or ratification of his actions or behavior by the City

Council, and that such behavior was and is contrary to the legitimate interests of the City.

**SECTION 5.** The City Council hereby ratifies the protective actions implemented and taken by the City Manager and, further, the City Council hereby orders the following additional measures:

- a) That Council Member Benjamin Lopez is removed from all appointed City Council Committees; sub-committees of the City Council; City-sponsored committees including, but not limited to, social, event, recreation, and community-oriented committees; and inter-agency committees and boards involving City of Montclair representation.
- b) That Council Member Benjamin Lopez is prohibited from speaking on behalf of the City Council or representing the City in any capacity other than as authorized in the Montclair Municipal Code.
- c) That Council Member Benjamin Lopez shall refrain from one-on-one contact, either on a personal or professional level, with employees of the City of Montclair and shall be prohibited from participating in public safety ride-along events provided through the City's Code Enforcement, Police, Human Services and Fire Departments.
- d) That Council Member Benjamin Lopez is prohibited from overnight stays in public safety crew sleeping quarters.
- e) That Council Member Benjamin Lopez is prohibited from the use of any locker room or exercise facilities owned and operated by the City and available to, or designated for use by, employees of the City.
- f) That Council Member Benjamin Lopez' access to the City's universal Z-Drive where documents, photographs and communications between employees of the City are shared is removed. Any specific City-related document requiring Council Member Benjamin Lopez' attention will be forwarded to him by the City Manager, City Attorney or City Clerk under separate communication. The City Clerk is directed to arrange for the delivery of City Council agendas and other City-related documents requiring Council Member Benjamin Lopez' attention to his home, by email, or otherwise arrange for their pickup by Council Member Benjamin Lopez or his representative in a public area at City Hall.
- g) All interagency email and text communications from Council Member Benjamin Lopez shall be directed only to City Council colleagues, the City Attorney or the City Manager, and to the City Clerk for purposes of City Council agendas and elections. Notwithstanding the foregoing, any communications concerning this matter and the two lawsuits filed by the two employees shall be between Council Member Benjamin Lopez' legal counsel and the City's defense counsel.
- h) Except as otherwise provided herein, Council Member Benjamin Lopez is prohibited from engaging in communications in an official or personal capacity with any employee of the City of Montclair via electronic communications, social media, and written correspondence or other media.
- i) That Council Member Benjamin Lopez is prohibited from City-paid/non-paid travel to conferences, meetings, training and/or other events where representation of the City is involved; and paid or non-paid travel provided through other public or private entities where representation of the City of Montclair is involved.
- j) That Council Member Benjamin Lopez is required to attend City-approved sexual harassment prevention training, and other training as may be required by the City Manager. Training should occur within thirty (30) calendar days following adoption of this Resolution of Censure. Furthermore, such training shall be repeated annually, subject to scheduling by the City Manager.
- k) Other actions as may be considered and implemented, from time-to-time, as necessary to protect the employees of the City from harassment, discrimination, bullying, and/or retaliation.
- l) All ratified actions to remain in place until otherwise rescinded by the appropriate authority.

**SECTION 6.** The City Council hereby censures Council Member Benjamin Lopez for the behavior and conduct described herein, and expresses the strongest possible disapproval and disavowal thereof.

**SECTION 7.** The City Council determines that adoption of this Resolution of Censure is necessary to affirm that such behavior and conduct shall not be tolerated, and such behavior and conduct shall be prevented from being repeated.

**SECTION 8.** The City Council regards Council Member Benjamin Lopez' behavior and conduct to be outside the course and scope of his performance as a member of the City Council.

**SECTION 9.** The City Council declares that Council Member Benjamin Lopez shall comply with all restrictions imposed as enumerated herein, and as ratified and ordered by the City Council and to be enforced by the City Manager.

**SECTION 10.** The City Manager is hereby directed to immediately notify the City Council if Council Member Benjamin Lopez engages in future conduct that is/are proscribed by this Resolution of Censure.

**SECTION 11.** It is the intent of the City Council, in the event of future improper and unprofessional conduct by Council Member Benjamin Lopez in violation of the terms of this Resolution of Censure, to pursue all legal remedies available by law to prohibit such conduct.

**SECTION 12.** This Resolution of Censure shall take effect immediately upon its adoption.

**APPROVED AND ADOPTED** this XX day of XX, 2022.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3344 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, 2022, and that it was adopted by the following vote, to-wit:

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

\_\_\_\_\_  
Andrea M. Myrick  
City Clerk





**MONTCLAIR CITY COUNCIL  
COMMITTEE/LIAISON ASSIGNMENTS  
CURRENT ASSIGNMENTS**

<b><i>City Council Committees*</i></b>	<b><i>Member</i></b>	<b><i>Member</i></b>
Code Enforcement/Public Safety	Lopez	Johnson
Community Activities Commission Interview Panel	Ruh	Martinez
Human Services	Ruh	Martinez
Legislative/Intergovernmental	Ruh	Dutrey
Personnel	Ruh	Johnson
Planning Commission Interview Panel	Johnson	Lopez
Public Works	Johnson	Lopez
Real Estate	Martinez	Dutrey
Tri-City Gold Line	Ruh	Dutrey

<b><i>City Council Liaisons</i></b>	<b><i>Member</i></b>	<b><i>Member</i></b>
Chamber of Commerce	Johnson	Martinez
Community Activities Commission	Ruh	Martinez
Planning Commission	Johnson	Lopez

<b><i>Interagency Committees</i></b>	<b><i>Member</i></b>	<b><i>Alternate</i></b>
Gold Line Phase II Joint Powers Authority Board	Ruh	Johnson
Omnitrans	Dutrey	Johnson
San Bernardino County Transportation Authority (SBCTA)	Dutrey	Johnson
IEUA Regional Sewerage Program Policy Committee	Dutrey	Lopez

<b><i>External Organizations</i></b>	<b><i>Member</i></b>	<b><i>Alternate</i></b>
City Selection Committee (San Bernardino County)	Mayor	Appointee
League of California Cities - Inland Empire Division	Johnson	Ruh
League of California Cities - State	Ruh	Martinez
National League of Cities	Ruh	Johnson
So. Cal. Assoc. of Governments - General Assembly	Dutrey	Ruh
West Valley Mosquito and Vector Control District (Montclair Resident Appointee)	Carolyn Raft (Exp. Jan 2024)	None

<b><i>External Committees</i></b>	<b><i>Member</i></b>	<b><i>Alternate</i></b>
Chamber of Commerce Legislative Committee	Ruh	Johnson
SBCTA Metro Valley Study Session	Dutrey	Johnson
SBC Mayors and City Managers Task Force	Dutrey	Starr (staff)
SBC Solid Waste Advisory Task Force (SWAT)	Johnson	Kulbeck (staff)

*\*The Mayor or another Council Member designated by the Mayor may attend Committee meetings in the absence of an assigned committee member.*

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS  
COMMITTEE HELD ON THURSDAY, FEBRUARY 17, 2022, AT 4:03 P.M.  
HELD VIA ZOOM TELECONFERENCE**

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**I. CALL TO ORDER**

Chair Johnson called the meeting to order at 4:03 p.m.

**II. ROLL CALL**

Present: Council Member Johnson (Chair); Council Member Lopez (Committee Member); City Manager Starr; Director of Economic Development and Housing Fuentes; Executive Director of Public Safety/Police Chief Avels; Director of Public Works/City Engineer Heredia; Director of Community Development Diaz; Engineering Division Manager Stanton; City Engineering Consultant Hoerning; City Clerk Myrick

**III. APPROVAL OF MINUTES**

The Committee approved minutes of the August 19, 2021, and January 20, 2022 meetings.

**IV. PUBLIC COMMENT**

**Mr. Jose Perez**, resident and member of the advocacy group **Safety Routes Ontario & Montclair**, expressed his gratitude for the City's support and implementation of the Safe Routes to School (SRTS) Program.

**V. PUBLIC WORKS DEPARTMENT UPDATES/ITEMS**

**A. OPERATIONS**

**1. MAINTENANCE ACTIVITIES**

An Operations Activities Report for January through February 2022 was included with the agenda. In response to Council Member Lopez's request from January's Public Works Committee meeting, Director of Public Works/City Engineer Heredia highlighted a section for work request totals added to the report. She advised that 146 work requests were generated, and all were completed.

Committee Member Lopez addressed a discrepancy on page 2 of the report. The report mentioned "Councilwoman Torres," whereas it should read "***Congresswoman Torres.***"

City Manager Starr advised **Congresswoman Torres'** visited the Central Avenue Bridge was to examine the project for which she has been lobbying funding.

Committee Member Lopez reported a pothole in the alley between Monte Vista and Helena Avenues, close to 4711 San Bernardino Street.

2. **ADDITIONAL ITEMS** — None

**B. FACILITIES**

1. **MAINTENANCE ACTIVITIES**

A Facilities Activities Report for January 2022 was included with the agenda. There were no questions or issues with the report.

2. **ADDITIONAL ITEMS** — None

**C. ENGINEERING DIVISION**

1. **Safe Routes to School (SRTS) Program – Vernon Middle School**

Director of Public Works/City Engineer Heredia stated that staff will install the flashing stop signs at the intersections of San Bernardino and Benito Streets at Vernon Avenue. She advised that staff is considering widening the curb ramp on the north side of San Bernardino Street to provide students a more expansive landing zone and is coordinating with **Monte Vista Water District** to relocate a water meter.

Committee Member Lopez expressed gratitude that the City is addressing items in the SRTS program.

**Ms. Yvette Miranda**, parent-volunteer with **Safety Routes Ontario & Montclair**, and **OMSD Board Member Flora Martinez** expressed gratitude to the City for implementing projects in the SRTS program.

City Clerk Myrick read a public comment expressing gratitude for the SRTS program.

2. **San Antonio Creek Trail Feasibility Study**

Director of Public Works/City Engineer Heredia stated that staff met with **San Bernardino County Transportation Authority (SBCTA)** and is working to secure funding for this project.

City Manager Starr advised this is projected to be a \$98 million project. The City applied for a grant under the Water Resources Development Act, which will fund 50 percent of the project, and intends to apply for additional grants to cover the rest.

3. **Parks and Recreation Master Plan RFP**

Director of Public Works/City Engineer Heredia reported staff is reviewing two submittals and will award the professional services agreement to the selected consultant at the March 7, 2022 meeting of the City Council.

**VI. POLICE DEPARTMENT UPDATE/ITEMS** — None

**VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS**

Director of Community Development Diaz advised that there are trailers in front of **Target** because the **Starbucks** located inside the building is being remodeled. He noted a Lot Line Adjustment is still pending for construction of the Panera Bread

restaurant in the parking lot. He stated the Village at Montclair project is still in the plan check phase. He also announced the Planning Commission recently approved beer and wine licenses for **La Bufadora** and the **Kickin' Crab**.

Committee Member Lopez asked when the Village at Montclair maps would be presented to City Council, noting they were not presented in February as mentioned at the January Public Works Committee meeting.

Director of Community Development Diaz stated many technical issues need to be addressed before they are presented.

## VIII. CAPITAL PROJECT UPDATES

### A. LOCAL PROJECTS

#### 1. Fremont Avenue and Arrow Highway Streetscape Project

Director of Public Works/City Engineer Heredia stated City Engineering Consultant Hoerning is reviewing the plans and working with Village Partners to move this project forward. The City is currently seeking proposals for a landscape architect to review this specialty item.

#### 2. Reeder Ranch Park Project

Engineering Division Manager Stanton discussed plans that are currently being reviewed by staff. He advised that once comments and corrections are made, staff may advertise this project for bids in April, and could possibly begin construction in the summer.

#### 3. Pacific Electric Trail Pedestrian Bridge Replacement

Engineering Division Manager Stanton reported the contractor is having trouble obtaining concrete.

City Manager Starr clarified that the contractor is trying to coordinate the bridge's arrival with placement into the location to save costs.

Chair Johnson requested an update on the homeless living under the bridge.

Engineering Division Manager Stanton advised there are not any persons currently living under the bridge. He also addressed resident **Bruce Culp's** public comment at the last City Council meeting, noting the new bridge is slightly narrower than the old one, but no changes would be made to the width of the bike trail.

#### 4. Zone 5 & 6 Street Rehabilitation Project

Engineering Division Manager Stanton stated the project was awarded on February 7, 2022, and, after the contract is executed, staff will schedule a pre-construction meeting with the contractor. The improvements will include Safe Routes to School signage and ADA ramps around Howard Elementary School. Staff's goal is to complete work in the areas around the schools before the commencement of classes.

**B. REGIONAL PROJECTS**

**1. I-10 Corridor Project**

The I-10 Corridor project contractor is continuing utility work along Monte Vista Avenue and is currently working on water lines. There will be road closures in order to keep the public safe.

Council Member Lopez expressed safety concerns about the current state of the road for northbound Monte Vista Avenue.

Director of Public Works/City Engineer Heredia mentioned these concerns would be conveyed to **SBCTA**.

**2. Central Avenue Bridge Project**

Director of Public Works/City Engineer Heredia stated this project is in the environmental review phase. The Environmental consultant will submit a final report to **Caltrans** for approval. The bridge consultant has been coordinating with **Union Pacific Railroad** regarding their yard expansion project to accommodate their access roads and tracks.

**3. Foothill Gold Line Extension Project**

City Manager Starr stated the price tag from Pomona to Montclair has experienced a significant increase. It has increased from \$540 million to \$748 million, and it is likely that the project will have to go out to bid rather than remain a part of the initial project's procurement. The Construction Authority will make this decision.

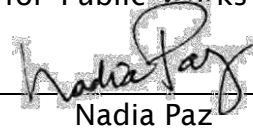
**IX. COMMITTEE AND CITY MANAGER ITEMS**

Staff met with **Caltrans** representatives to discuss concerns at the Transcenter and I-10 freeway widening construction. Discussions included parking lot maintenance, fencing repairs, insurance coverage, and homelessness at the Transcenter; and including sewer and traffic signal construction as part of the freeway construction.

**X. ADJOURNMENT**

At 4:46 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, March 17, 2022.

Submitted for Public Works Committee approval,



Nadia Paz

Transcribing Secretary

MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
MARCH 21, 2022, AT 5:35 P.M. IN THE CITY  
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,  
MONTCLAIR, CALIFORNIA

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**I. CALL TO ORDER**

Mayor Pro Tem Ruh called the meeting to order at 5:35 p.m.

**II. ROLL CALL**

Present: Mayor Pro Tem Ruh, Mayor Dutrey, and City Manager Starr

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of March 7, 2022.**

Moved by Mayor Dutrey, seconded by Mayor Pro Tem Ruh, and carried unanimously to approve the minutes of the Personnel Committee meeting of March 7, 2022.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

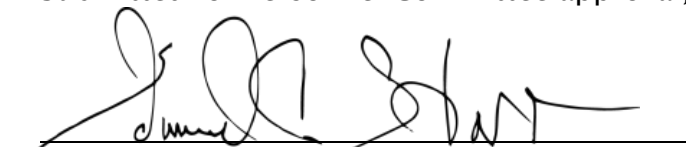
At 5:36 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 5:52 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 5:52 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager

MINUTES OF THE SPECIAL MEETING OF THE MONTCLAIR CITY COUNCIL HELD ON MONDAY, MARCH 21, 2022, AT 6:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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**I. CALL TO ORDER**

Mayor Dutrey called the meeting to order at 6:00 p.m.

**II. ROLL CALL**

Present: Mayor Dutrey; Mayor Pro Tem Ruh; Council Member Martinez; City Manager Starr; City Attorney Robbins; City Clerk Myrick

Absent: Council Members Johnson (arrived at 6:02 p.m.) and Lopez.

**III. PUBLIC COMMENT**

**Mr. Bruce Culp**, resident, indicated his displeasure with Council Member Lopez and stated his opinion that he should resign.

**IV. CLOSED SESSION PURSUANT TO GOVERNMENT CODE §54956.9(d)(1) REGARDING PENDING LITIGATION**

City Attorney Robbins requested the City Council meet in closed session to discuss the below referenced cases.

A. *Garcia v. Lopez, City of Montclair, et al.*

B. *Fuentes v. Lopez, City of Montclair, et al.*

**V. CLOSED SESSION**

At 6:02 p.m., Council Member Johnson arrived in closed session.

At 6:02 p.m., the City Council went into closed session to discuss pending litigation.

**VI. CLOSED SESSION ANNOUNCEMENTS**

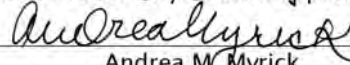
At 6:59 p.m., the City Council returned from closed session.

City Attorney Robbins advised the City Council met in closed session regarding the above two matters of pending litigation; direction was given to staff; and no further announcements would be made at this time.

**VII. ADJOURNMENT**

At 6:59 p.m., Mayor Dutrey adjourned the City Council.

Submitted for City Council approval,



Andrea M. Myrick  
City Clerk

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, MARCH 21, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

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I. CALL TO ORDER

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

II. INVOCATION

**Ma Mukthika and Sri Nithya Gauribharathananda, Nithyananda Vedic Temple**, gave the invocation.

III. PLEDGE OF ALLEGIANCE

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

IV. ROLL CALL

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

City Manager/Executive Director Starr; Director of Community Development Diaz; Director of Human Services Richter; Finance Manager Kulbeck; Executive Director of Public Safety/Police Chief Avels; Director of Public Works/City Engineer Heredia; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

A. **Mr. Bruce Culp**, resident, stated he continues to monitor the demolition and replacement of the **Pacific Electric Trail** bridge and stated he will be happy to share photographs he is taking to document the progress. He expressed his appreciation to staff for their continued diligence in moving this project forward. He also extended his thoughts and prayers to those suffering in Ukraine.

B. **Ms. Yvette Miranda**, resident and parent of an **Ontario-Montclair School District** student and member of **Safe Routes to School (SRTS) Community of Ontario & Montclair**, expressed gratitude for the improvements around Montclair schools. She thanked Council Member Lopez for his involvement with the **SRTS** parent group.

C. **Ms. Elizabeth Valdez**, resident and **SRTS Community of Ontario & Montclair** member, submitted a written comment expressing appreciation for the school safety infrastructure improvements and Council Member Lopez's support.

VII. PUBLIC HEARINGS

A. **Second Reading — Consider Adoption of Ordinance No. 22-1000 Adopting a Policy for the Use of Military Equipment by the Montclair Police Department**

Mayor Dutrey declared it the time and place set for public hearing to consider second reading of Ordinance No. 22-1000 and invited comments from the public.

**Mr. Culp** restated his support for this Ordinance, adding he feels the availability of this information would deter rather than invite crime.

There being no one else in the audience wishing to speak, Mayor Dutrey closed the public hearing and returned the matter to the City Council for its consideration.

Council Member Lopez stated while he intends to support the adoption of the Ordinance so that the Police Department can have its



policy in place by the statutory deadline, he is not happy overall that this is being required of cities.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried that Ordinance No. 22-1000 be read by number and title only, further reading be waived, and this be declared its second reading; and that the City Council adopt Ordinance No. 22-1000.

Ordinance No. 22-1000 was adopted by the following 5-0 vote:

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

## VIII. CONSENT CALENDAR

Council Member Johnson stated she would like to comment on Item B-13.

Council Member Lopez requested Items B-10, C-1, and D-1 be pulled from the Consent Calendar.

Mayor Dutrey entertained discussion on Items B-10, B-13, and C-1 prior to the vote on the Consent Calendar, and pulled Item D-1 for separate discussion and vote.

Moved by Council Member/Director Lopez, seconded by Council Member/Director Johnson, and carried unanimously 5-0, the City Council pulled Item D-1 and approved the remainder of the Consent Calendar, with discussion held on Items B-10, B-13, and C-1:

### A. Approval of Minutes

#### 1. Adjourned Special Meeting — March 7, 2022

The City Council approved the minutes of the March 7, 2022 adjourned meeting.

#### 2. Regular Joint Meeting — March 7, 2022

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 March 7, 2022 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 February 28, 2022.

#### 2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the City Warrant Register dated March 21, 2022, totaling \$1,254,626.62; and the Payroll Documentation dated February 27, 2022, amounting to \$641,209.04 gross, with \$445,960.13 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 February 28, 2022.

#### 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 02.01.22-02.28.22 in the amounts of \$7,657.00 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 February 28, 2022.

**6. Approval of MHC Warrant Register**

The MHC Board approved the MHC Warrant Register dated 02.01.22-02.28.22 in the amount of \$56,674.15.

**7. Receiving and Filing of MHA Treasurer's Report**

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending February 28, 2022.

**8. Approval of MHA Warrant Register**

The MHA Commissioners approved the MHA Warrant Register dated 02.01.22-02.28.22 in the amount of \$0.00.

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

**Declaring Termination of the Emergency Action Authorized on April 19, 2021 Related to the Pacific Electric Trail Bridge Replacement Project**

The City Council took the following actions:

- (a) Received and filed a final status report on emergency contracting procedures for the Pacific Electric Trail Bridge Replacement Project.
- (b) Declared termination of the emergency action authorized on April 19, 2021 related to the Pacific Electric Trail Bridge Replacement Project.

**10. Rejecting All Bids for Construction of the Modular Restroom Facility at the Montclair Transcenter Project**

**Authorizing Staff to Modify the Plans and Specifications and Re-Advertise for Bid Proposals for Construction of the Modular Restroom Facility at the Montclair Transcenter Project**

Council Member Lopez asked what amount was budgeted for this project.

City Manager Starr advised the construction estimate was \$80,000, which is the base budgeted amount.

Council Member Lopez asked if the \$25,000 contribution from Greyhound is allocated for this project.

City Manager Starr stated that is correct.

Council Member Lopez asked if staff would be paid more for their work on the project, since the utility portion of the project would now be completed in-house.

City Manager Starr stated staff would receive their regular rate of pay and overtime pay when necessary.

Council Member Lopez asked if the state owns the property.

City Manager Starr explained that, while the state owns the property, the City has an arrangement with Caltrans and San Bernardino County Transportation Authority where the City maintains the maintenance and operations, and the City is currently trying to expand the contract.

Council Member Lopez asked if other duties of Public Works staff would be neglected if they are redirected to this work.

City Manager Starr stated that is true but noted, due to the nature of many duties of the Public Works Department, they are often tasked with unscheduled activities such as the cleanup that was required after the recent windstorm.

Council Member Lopez asked if part-time staff could be hired to fill in any deficiencies.

City Manager Starr stated that, if needed, the City could utilize one of its contracts for specialty part-time labor.

The City Council took the following actions:

- (a) Rejected all bids for construction of the Modular Restroom Facility at the Montclair Transcenter Project.
- (b) Authorized staff to modify the plans and specifications and re-advertise for bid proposals for construction of the Modular Restroom Facility at the Montclair Transcenter Project.

**11. Declaring a 1991 GMC Sewer Jetter Truck as Surplus and Available for Auction**

The City Council declared a 1991 GMC Sewer Jetter Truck as surplus and available for auction.

**12. Declaring Certain City Property as Surplus and Available for Auction or Destruction**

The City Council declared certain City Property as surplus and available for auction or destruction.

**13. Approval of the Fiscal Year 2021-22 Schedule of Recommendations from the Community Activities Commission for Community Benefits Funding**

Council Member Johnson stated she is pleased to see all organizations who applied received some of this supportive funding. She recalled hearing very touching stories when she was on the Community Activities Commission and heard the organizations speak at these benefit funding hearings and appreciates all that these organizations do for Montclair residents.

Council Member Lopez asked if **House of Ruth** ever applies for this funding.

Director of Human Services Richter advised staff has reached out on many occasions but has not received any response.

Mayor Dutrey advised the Community Benefits Fund is allocated at the discretion of the City Council, and the City Council has the ability to increase this funding.

The City Council approved the Fiscal Year 2021-22 schedule of recommendations from the Community Activities Commission for Community Benefits Funding.

**C. Agreements**

**1. Approval of Agreement No. 22-19 with San Bernardino County Service Area 70 Consolidated Fire District for a Household Hazardous Waste Collection Facilities Program**

Council Member Lopez asked if the contract includes the same locations for the collection facilities and how they are chosen.

City Manager Starr advised the same locations are designated in Chino, Ontario, and Upland. He noted while the City has asked for a Montclair site, the County maintains that the current locations are adequate and adding new sites would increase their costs.

The City Council approved *Agreement No. 22-19* with San Bernardino County Service Area 70 Consolidated Fire District for

a Household Hazardous Waste Collection Facilities Program.

**2. Authorizing Compliance Review of the Montclair Housing Authority's Existing Affordable Housing Agreements**

**Approval of Agreement No. 22-21 with the Strickler Association to Conduct Compliance Review of Existing Affordable Housing Agreements Subject to Any Revisions Deemed Necessary by the City Attorney**

The City Council took the following actions:

- (a) Authorizing Compliance Review of the Montclair Housing Authority's Existing Affordable Housing Agreements.
- (b) Approved *Agreement No. 22-21* with the Strickler Association to conduct compliance review of existing affordable housing agreements subject to any revisions deemed necessary by the City Attorney.

**IX. PULLED CONSENT CALENDAR ITEMS**

**D. Resolution**

**1. Adoption of Resolution No. 22-3340 Opposing the Potential Forthcoming Statewide Ballot Measure, the "Taxpayer Protection and Government Accountability Act"**

Council Member Lopez asked why the City is taking a position on this now, when it hasn't even made it on the ballot.

Mayor Dutrey advised he asked for this be placed on the agenda at the request of the **League of California Cities (CalCities)**. He stated **CalCities** is taking the position that this law would create havoc for cities by limiting the ability to generate local revenues.

Council Member Lopez stated he believes if this were to get on the ballot and pass, it would not affect Measure L funds and simply tightens the ability for any municipality to raise taxes and fees. He noted with the state's surpluses it would be prudent for local governments to not be so quick to go to the voters for money. He stated he is not willing to formally oppose the legislation and asked the City Council not take a position at this time.

Mayor Dutrey advised this bill would prohibit any tax from having a local advisory committee which is common with local voter-approved tax measures. He added increasing fines such as code enforcement violations would need to go to the voters. He stated he would be fine if this measure only applied to the state, but local governments need to be left alone.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-1 (Lopez opposing), the City Council adopted Resolution No. 22-3340 opposing the potential forthcoming statewide ballot measure, the "Taxpayer Protection and Government Accountability Act".

**X. BUSINESS ITEMS**

**A. Consider Discussing and Providing Direction Regarding Consideration of a Resolution of Censure Disapproving and Censuring Certain City Conduct and Behavior of Montclair City Council Member Benjamin Lopez and Ratifying Protective Actions Taken, and Recommended, by the City Manager**

City Manager Starr provided a PowerPoint-led presentation regarding the investigation that took place into the alleged misconduct of Council Member Lopez, in which the investigator sustained the allegations, and the actions taken by the City in response to protect the rights and safety of the affected employees. The presentation outlined actions the City Council could take including considering censuring Council Member Lopez and ratifying the protective actions

taken and recommended by the City Manager.

At 8:00 p.m., Mayor Dutrey called a 5-minute recess.

At 8:05 p.m., Mayor Dutrey called the meeting back to order with all Council Members present.

Mayor Dutrey invited comments from the public on this matter.

1. **Ms. Alma Trejo**, resident, noted she is not surprised and has spoken out against Mr. Lopez's homophobic and sexist rhetoric in the past, including social media posts. She stated he has now shown who he is despite never admitting fault or responding to those who spoke out against him. She stated her disappointment in Mayor Dutrey and others who openly supported his election. She expressed her disappointment that the public's concerns went ignored about Mr. Lopez, and now the City must spend funds on costly litigation because of Mr. Lopez's actions to harass two men from the vulnerable group he lobbied against. She stated Mr. Lopez should resign and that more training would not be enough.
2. **Mr. Culp** apologized to the victims, noting they did the right thing to report the harassment, and assured them that the residents would work to remove Council Member Lopez from office. He expressed disgust at how quickly Mr. Lopez preyed on employees upon assuming his office. He stated while Mr. Lopez often expresses concern over the City's finances, the City has incurred several costs due to his actions so far, including the hiring of an investigator and defense attorney, other legal costs, additional equipment for Council Member Lopez's use outside of City Hall, high-level staff time meeting with employees and facilitating Council meetings about this issue, costs associated with working arrangements for the employees to minimize contact with Council Member Lopez, and the harassment training that may be required. He stated there may be more consequences including denial of grants. He requested the City Council adopt a motion to have staff prepare a report of all the costs related to this matter so the public can be informed, and Council Member Lopez may be compelled to do the right thing and reimburse the City out of his own pocket.
3. **Mr. Thuan Nguyen**, resident, stated he has spoken against the anti-LGBTQ rhetoric of Mr. Lopez for the past two years and sees the irony that his behavior was an expression of his own self-hatred. He disagreed with those crediting Council Member Lopez for community projects, noting his contributions to those projects are not unique and are shared with other officials, community members, and staff; however his history of anti-LGBTQ lobbying can be uniquely attributed to him. He expressed support for the employees who endured harassment from Mr. Lopez and stated the City needs to do more than training, such as changing the culture and hearing concerns from residents and employees. He stated he also holds Mayor Dutrey and Mayor Pro Tem Ruh accountable for endorsing Mr. Lopez and asked for their rescission of those endorsements.
4. **Mrs. Carolyn Raft**, resident, stated she has known all three individuals for many years, and believes the two employees. She urged Council Member Lopez to resign for the sake of his family, noting a former Montclair Mayor who was involved in a solicitation scandal resigned immediately when his actions came to light.
5. **Mr. Rob Pipersky**, resident, stated his belief that Mr. Lopez abused his power as a council member to gain sexual favors from employees, and he does not feel a censure is a strong enough punishment. He stated while only two incidents have

come to light, there are likely many more with this being the tip of the iceberg. He insisted the issue is with Mr. Lopez's predatory behavior and not his sexuality. He stated the City Council should start a recall against Council Member Lopez and advocate for his removal. Because a Council Member cannot be removed from office without having committed a felony, he suggested the City adopt a law to make sexual harassment by an elected official while in office a felony. He asserted that Mr. Lopez was not acting in the City's interest and the City should not pay for his legal defense.

6. **Ms. Celina Gutierrez** stated she is the mother of a child who participates in **Montclair Little League** and they both support "Coach Ben," which is what they call Mr. Lopez, who coaches for their team. She stated Coach Ben has been respectful and kind to her family, and has coached players with same-sex parents and has never discriminated. She criticized those who commented remotely for "hiding behind a computer screen."

City Clerk Myrick read written comments submitted by the following individuals and summarized below:

7. **Anel Bravo Bautista** stated they were horrified to learn after his election of Mr. Lopez's history of homophobic actions that do not align with this community, and stated they feel those who have attempted to speak out against his representation have been silenced and blocked by Mayor Dutrey and Council Member Lopez. They requested the City Council take immediate disciplinary action against Council Member Lopez in light of these lawsuits.
8. **Mr. Javier Hernandez**, Executive Director of the **Inland Empire Coalition for Immigrant Justice (ICIJ)**, stated his organization works with over 50 organizations in the Inland Empire, reaching over 50,000 families including residents of Montclair. He stated **ICIJ** is in support of censuring Council Member Lopez for these allegations and for his past homophobic and divisive comments. He stated he feels Mr. Lopez was emboldened to cause this harm as a direct result of the support he received from the Mayor and City Council, both by their silence and their endorsements of his candidacy. He stated while censure is a step in the right direction, the Mayor and City Council owe the residents of Montclair an apology for not censuring him sooner for being a divisive figure in the community.
9. **Mr. Luis Nolasco**, resident of the Inland Empire, stated he is a proud member of the LGBTQ community and echoes the call for a censure of Council Member Lopez for both the current allegations and his past actions and rhetoric against the LGBTQ community.

Council Member Johnson stated this is an ugly situation and nobody wants to be in this position. She stated the City Council heard the investigator's report, which included evidence and interviews with several individuals, and the City Council has a duty to protect.

Mayor Pro Tem Ruh stated he is against harassment of any type, whether playful jokes, bullying, or sexual harassment, noting all types can be hurtful and are difficult for the victim to deal with. He stated that during a closed session the City Council did receive a report from the investigator who sustained the facts of the alleged harassment; however, he feels only two individuals were heard from in this situation whereas three were involved. He also stated he feels this is a case that should be judged by the legal system, not the City Council. He added his belief that elected officials should use better judgment and not socialize at all with staff. He added this is an agonizing decision that he will make based on what he knows are the facts, but he is willing to admit he is wrong if proven so.

Council Member Martinez disagreed with Council Member Ruh that only two parties were heard from, stating the investigator interviewed all three parties, which included Council Member Lopez, and reported the findings. She stated the Council has a duty to protect the City's employees from harassment. She stated her appreciation for the due diligence put into tonight's report from the City Manager and City Attorney, noting it was owed to those who were victimized as well as those who have yet to be victimized and those who have not yet come forward. She stated the findings are from a neutral third party investigator who determined the allegations were factual, true incidents that occurred.

Mayor Dutrey stated the City Council is taking this situation very seriously and is trying to make this a fair process, just as a normal employee would receive. He emphasized this is not being done as a personal attack on Mr. Lopez, but as an obligation to the employees of the City of Montclair and the residents who expect the City Council Members to act in a professional manner when it comes to personnel issues.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-0-1 (Lopez abstained), the City Council took the following actions:

1. Scheduled for consideration by the City Council a censure of Montclair City Council Member Benjamin Lopez at the next regular meeting on Monday, April 4, 2022, at 7:00 p.m. in the City Council Chambers;
2. Directed staff to prepare a resolution of the censure based on the information in the City Manager's presentation and staff report on this item; and
3. Ratified protective actions taken and recommended by the City Manager.

#### XI. COUNCIL WORKSHOP

##### A. Discussion of Audit Responsibilities and Process with Governing Board of the City (Audit Committee) by Van Lant & Fankhanel, LLP, the City's Independent Auditing Firm

The City Council continued this presentation to an adjourned meeting on Monday, April 4, 2022, at 5:45 p.m. in the City Council Chambers.

#### XII. COMMUNICATIONS

- A. Department Reports — None
- B. City Attorney — No Comments
- C. City Manager/Executive Director — No Comments
- D. Mayor/Chair — No Comments
- E. Council Members/Directors

1. Council Member/Director Johnson announced the **Chamber of Commerce** will be hosting a free e-waste drive-thru event this Saturday and Sunday, March 26 and 27, at the Chamber office's parking lot located at 8800 Benson Avenue from 9:00 a.m. to 2:00 p.m. each day.
2. Mayor Pro Tem/Vice Chair Ruh wished his sincere condolences to **Chaffey College Governing Board President Gary Ovitt** and **Chaffey Joint Union High School District Board President Sue Ovitt** for the recent and sudden loss of a family member, noting he attended the memorial service.

3. Council Member/Director Lopez made the following comments:
- (a) He asked why the protected turn signal was removed from the traffic light he reported at the last meeting.  
  
City Manager Starr advised the light is located in **Caltrans'** area of responsibility and the City has communicated with them regarding the light and other issues such as enhancing markings and installing pylons temporarily for the lanes that turn onto the freeway.
  - (b) He warned those who will be driving tonight that from 11:00 p.m. to 5:00 a.m., the I-10 Freeway will be closed down completely from Euclid Avenue to Holt Boulevard.

**F. Committee Meeting Minutes**

**1. Minutes of Personnel Committee Meeting of March 7, 2022**

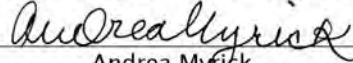
The City Council received and filed the minutes of the Personnel Committee meeting of March 7, 2022, for informational purposes.

**XIII. ADJOURNMENT**

At 9:00 p.m., Chair Dutrey adjourned the Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board.

At 9:00 p.m., Mayor Dutrey adjourned the City Council to Monday, April 4, 2022, at 5:45 p.m. in the City Council Chambers for a Council Workshop presentation about the City's annual audit procedures by Van Lant & Fankhanel, LLP.

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



Andrea Myrick  
City Clerk