

# CITY OF MONTCLAIR

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

### AGENDA

MONDAY, AUGUST 15, 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, August 15, 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**
  - A.** Recognition of the California 52nd Assembly District Veteran of the Year, Woman of the Year, and Business of the Year

- 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. 22-3366 Making Findings Pursuant to the California Environmental Quality Act and Approving Tentative Parcel Map No. 20474 and a Precise Plan of Design for a Proposed 302-Unit Residential Apartment Development Within the North Montclair Downtown Specific Plan on 9.96 Acres Located Approximately 200 Feet West of the Intersection of Monte Vista Avenue and Richton Street, West of the San Antonio Creek Channel at 4700 Huntington Drive [CC] 5
- B. Second Reading — Consider Adoption of Ordinance No. 22-999 Adding Chapter 4.76 to Title 4 of the Montclair Municipal Code Related to Imposing a Cannabis Business License Tax (Subject to Final Approval by the Voters at the November 8, 2022 General Municipal Election) [CC] 56

**VIII. CONSENT CALENDAR**

- A. Approval of Minutes
  - 1. Regular Joint Meeting — August 1, 2022 [CC/SA/MHC/MHA/MCF] 284
- B. Administrative Reports
  - 1. Consider Receiving and Filing of Treasurer’s Report [CC] 65
  - 2. Consider Approval of Warrant Register & Payroll Documentation [CC] 66
  - 3. Consider Receiving and Filing of Treasurer’s Report [SA] 67
  - 4. Consider Approval of Warrant Register [SA] 68
  - 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 69
  - 6. Consider Approval of Warrant Register [MHC] 70
  - 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 71
  - 8. Consider Approval of Warrant Register [MHA] 72
  - 9. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule [CC] 73
  - 10. Consider Authorizing the Purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co. [CC]  
Consider Declaring a 2004 International Combo Sewer Truck (Unit 314) as Surplus and Available for Auction [CC] 77
- C. Agreements
  - 1. Consider Amending the 2019-2024 Capital Improvement Program to Include the Holt Boulevard Median and Street Rehabilitation Project [CC]  
Consider Approval of Agreement No. 22-84 with HR Green Pacific for the Preparation of Plans and Specifications for the Construction of Median and Street Rehabilitation Improvements on Holt Boulevard From Ramona Avenue to Benson Avenue, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]  
Consider Approval of Agreement No. 22-85 with AGA Engineers, Inc. for the Preparation of Plans and Specifications for the Construction of Traffic Signals Upgrades and Traffic Signal Interconnect and Broadband Fiber Optic Improvements, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing a \$503,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Costs Related to Agreement Nos. 22-84 and 22-85 [CC]

Consider Authorizing a \$45,829.25 Design Services Contingency for the Project [CC]

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2. Consider Approval of Agreement Nos. 22-86, 22-87, and 22-88 with Montclair Little League and Golden Girls Softball League for Use of Ball Field Facilities, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

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3. Consider Approval of Agreement No. 22-89 with San Bernardino County for Access to the Sheriff's Automated Systems, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign Agreement No. 22-89 [CC]

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4. Consider Approval of Agreement No. 22-90 with the San Bernardino County Office of Homeless Services to Accept an Award for the Homeless Housing, Assistance, and Prevention Program Round 2 (HHAP2), Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing the City Manager to Sign Agreement No. 22-90 and Any Other Related Documents to Effectuate Related Programs [CC]

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D. Resolutions

1. Consider Adoption of Resolution No. 22-3342 Approving Agreement No. 22-26, an Affordable Housing Agreement Between the City, MHC, and MHA; Authorizing the Transfer of Certain Real Property located at 5072 Moreno Street to the Montclair Housing Authority; and Declaring the Real Property to be Exempt Surplus Land [CC]

Consider Adoption of Montclair Housing Authority Resolution No. 22-01 Approving Agreement No. 22-26, an Affordable Housing Agreement, and Accepting the Transfer of Certain Real Property from the City of Montclair [MHA]

Consider Adoption of Montclair Housing Corporation Resolution No. 22-01 Approving Agreement No. 22-26, an Affordable Housing Agreement [MHC]

Consider Authorization of a \$40,000 Appropriation from the Housing Trust Fund for Rehabilitation of the Property Located at 5072 Moreno Street [MHC]

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2. Consider Adoption of Resolution No. 22-3376 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of August 15, 2022, through September 14, 2022 [CC]

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**IX. PULLED CONSENT CALENDAR ITEMS**

**X. COMMUNICATIONS**

- A. Department Reports — None

B. City Attorney

- 1. Request for City Council to Meet in Closed Session Pursuant to Government Code Section 54956.8 Regarding Real Property Negotiations [CC]

*Properties:* APNs 1009-383-17-0000 and 1009-391-20-0000  
*Negotiating Parties:* City of Montclair, Boyce and Green Inc. Ownership, and Cynthia L. Cox  
*City Negotiator:* Edward C. Starr, City Manager  
*Under Negotiation:* Recommendations Regarding Purchase Price

C. City Manager/Executive Director

D. Mayor/Chairperson

E. Council Members/Directors

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

- 1. Personnel Committee Meeting — August 1, 2022 [CC] 283

**XI. CLOSED SESSION**

**XII. CLOSED SESSION ANNOUNCEMENTS**

**XIII. ADJOURNMENT**

*The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Tuesday, September 6, 2022, at 7:00 p.m.*

*Reports, backup materials, and additional materials related to any item on this Agenda distributed to the meeting bodies after publication of the Agenda packet are available for public inspection in the Office of the City Clerk between 7:00 a.m. and 6:00 p.m., Monday through Thursday. Please call the City Clerk's Office at (909) 625-9416 or send an e-mail to [cityclerk@cityofmontclair.org](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, August 11, 2022.*



Lot 3, located at the northeast corner of the site, will be dedicated to the City for use as a public park. The park site is approximately 18,673 SF in size and is in an ideal location to serve as the trailhead location for the existing Pacific Electric Trail and the proposed San Antonio Creek Trail. Amenities for the park will be determined after plans have been prepared for City review and approval, and may include seating, a fenced dog park area, and landscaping.

The new public street, Lot A, on the north side of the project site would be named Huntington Drive and connect eastward to Monte Vista Avenue by means of a new bridge to replace the existing bridge over the San Antonio Creek Channel. Eventually, the new street segment will connect with the existing Huntington Drive right-of-way located west of the project site per the NMDSP. The new street right-of-way will be 40 feet in width and designed as a neighborhood street with only two lanes of travel. On-street public parking will be limited to the south side of the new street. The new bridge at the channel will be located where the existing bridge is with only minor adjustments to its width and geometry to align with the new Huntington Drive improvements. Details concerning the design of the new bridge are not yet complete and are subject to the Army Corps of Engineers’ review and approval, a process that would commence following the City Council decision on the project.

Moreover, the Montclair Station project does not involve any changes to the existing conditions on Huntington Drive west of the project’s westernmost boundary. Possible future changes to improve Huntington Drive to the west will be part of a separate project with input and coordination with the cities of Claremont and Upland, SCBTA, and Huntington Drive residents. The City has recently obtained a consultant to undertake the project and to make recommendations for consideration.

Precise Plan of Design (Exhibit B)

Montclair Station is designed around a central looping street and second drive aisle linking the project’s 17 residential and amenity buildings and open spaces, as further described below:

<b>Montclair Station — Summary of Building Types</b>			
<b><i>Parcel</i></b>	<b><i>No. of Buildings</i></b>	<b><i>Stories</i></b>	<b><i>Unit Type</i></b>
Parcel 1	7 - Residential (Flats) <sup>1</sup>	3 and 4	256 Dwelling Units some w/attached garages
	4 - Amenity Buildings	1	Fitness Center (2,198 SF) Community Center (3,038 SF) Pool and Building (921 SF) Office and Mail Building (1,890 SF)
Parcel 2	6 - Residential (Townhouses) <sup>2</sup>	3	46 Dwelling Units w/attached garages
<sup>1</sup> Flat – an individual residence on one floor level within a larger building containing a number of such residential units. <sup>2</sup> Townhouse – a multi-floor residential unit sharing one or two walls with adjacent townhouse units but with their own entrances.			

<b>Montclair Station – Summary of Unit Mix and Sizes</b>		
<i>Floor Plan</i> <sup>1</sup>	<i>Size Range</i>	<i>Number of Units</i>
Studio /1 Bath	+/- 558 s.f.	<b>24 Units</b>
1 Bedrooms/1 Bath	+/- 713 to 841 s.f.	<b>168 Units</b>
2 Bedrooms/2 – 2.5 Baths	+/- 1,037 to 1,536 s.f.	<b>80 Units</b>
Townhome 3 bedrooms/3 Baths	+/- 1,590 and 1,810 s.f.	<b>30 Units</b>
<b>Total</b>		<b>302 units</b>
<sup>1</sup> Each unit will have a private patio or balcony space of varying sizes depending on location. Private patios at ground level would be defined by low decorative walls and landscaping.		

Townhouse units on Parcel 2 will be oriented toward Huntington Drive on the north. At 302 units, the project density will be 30 dwelling units per acre.

Six covered trash enclosures for the project are located around the site in close proximity to the buildings. Access to each trash enclosure would be from the private street and drive aisles serving the project where solid waste trucks can have direct access.

Parking

Parking provided for the project is 531 spaces located in attached garages, tandem spaces, on surface parking areas, and on private streets. The developer has not requested a reduction in the number of parking spaces.

<b>Montclair Station – On – Site Parking Summary</b>		
<i>Use</i>	<i>Required Spaces</i>	<i>Provided Spaces</i>
Unit (@ 1.5. Spaces per Unit)	453 Spaces	216 Garage Spaces 30 Open Tandem Spaces <sup>1</sup> 206 Open Spaces
Guests <sup>2</sup> (@1 space per 4 Units)	76 Spaces	77 Spaces
<b>Totals</b>	<b>529 Spaces</b>	<b>529 Spaces</b>
<sup>1</sup> Tandem spaces assigned to the same dwelling unit.		
<sup>2</sup> Chapter 5.4.010.A.3.1 of the NMDSP allows on-street parking located along the frontage of a development to count towards short-term guest parking requirement. Street parking is not assignable to units within the project.		

As a standard requirement for projects in the NMDSP, a Parking Management Plan (PMP) is required to manage parking for the project. The on-site manager of the property management company hired for the development will administer the PMP. As part of the initial rental application process, each applicant receives written notice of the project’s parking management plan for the complex. All executed lease agreements will contain the entire PMP as an exhibit to the lease agreement, including a signed acknowledgment that the resident(s) agree to the terms of the PMP.

Architectural Style

The vision for Montclair Station is for a Modern Farmhouse aesthetic. According to the project architect, the Modern Farmhouse aesthetic combines the sleek clean lines of contemporary design with the traditional materials of the farmhouse to create a uniquely fresh take on the country living-inspired style. The Modern Farmhouse style exhibits warmth and simplicity, characterized by natural textures and materials such as horizontal wood-looking siding, vertical board & batten siding, decorative black iron accents, dark-colored window frames, and simple gabled-roof forms with dark-colored shingles. The color palette is more monochromatic in nature in different shades of white, gray, and black. Wood tone accents add warmth to the design.



Special articulation and detailing occur near the base of the taller buildings to help identify the ground floor unit entry points and lower the apparent scale of these buildings. The townhouses offer a unique feature for the residents by providing small front yards or enclosed patios with brightly colored unit entry doors that march along the main street or along a wide paseo that connects to the main central street.

### Landscaping/Hardscape

The landscape and irrigation plans for the project, include a varied selection and distribution of drought-tolerant plant materials that are intended to complement the architecture of the buildings. Within the central paseo open space area, the landscape theme is customized further around each amenity building. In addition to plant materials, these spaces will include several decorative elements such as group seating and tables, string lighting, benches, potted plants, grills, fire pits, community garden beds, enhanced paving materials/finishes, etc.

The proposed tree list includes Willow, Magnolia, London Plane, Western Redbud, Strawberry tree, Crape Myrtle, Oak, Olive, and Citrus trees. The shrub list includes various shrubs, ornamental grasses, and succulents. The landscape plan also includes Crape Myrtle parkway trees along Huntington Drive and trees facing the Metrolink and Gold Line railways. Irrigation of all planter areas will be by means of a water-efficient irrigation system featuring a Smart Weather-Based Controller, root-watering bubblers for trees, and efficient pressure-compensating module drip emitters. Lastly, a Water Budget, as required by state law, has been prepared for project landscaping and irrigation.

Copies of the site plan, floor plans, elevations, renderings, and conceptual landscape plan are included in the City Council's packets. The full set of plans associated with this project are also available to download from the following link:

<https://cloud.cityofmontclair.org/main.html?download&weblink=2e481376775f6f38b75e8242ce542657&realfilename=Case 2021%2D33 Montclair Station Architectural Plans PM%2Epdf>

### Planning Division Comments

Staff finds the project to be well designed, visually attractive, and consistent with the intent and design goals of the NMDSP. The project also makes good use of a large property that is generally out of view and currently not easily accessed. The size and shape of the site is sufficient to accommodate the proposed project without need for variances and the layout of buildings and open space areas is appropriate without overbuilding the site. Moreover, the proposed parcel map design is appropriate and a logical means for supporting the anticipated development of the site. The proposed parcel sizes are of adequate size and dimension for the intended development and the street configuration will provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public street within the project boundaries will be fully improved and serve to implement the eventual goal of a linked street system that promotes walkability and connectivity to adjacent properties and uses, including the Transcenter and future Gold Line extension.

### Precise Plan of Design

Over the past year, the applicant has worked closely with staff and the City's architectural design consultant to ensure the project is in accordance with the development standards

and design guidelines of the NMDSP. None of the buildings are excessively large and detailing is extended to all sides. The tallest buildings are four stories high and are concentrated on the east side of the property where they will have no impact on existing residences or other uses, while the remainder of the buildings on the site are three stories high.

The Modern Farmhouse style of the project will add a distinctive development for the City and be consistent with existing and newer developments nearby to the north and southeast. Staff believes exterior colors and materials selected for the project are well suited to the design and consistent with the high expectations for projects within the NMDSP. Moreover, the project will be visually attractive to passengers on Metrolink and future Gold Line trains as they pass through the City.

The proposed landscaping plan, including hardscape elements, is well done and complementary to the proposed architecture and planning of the property. The central paseo will provide future residents with convenient access to the open space, community buildings, and landscape amenities. Moreover, when the public neighborhood park at the northeast corner of the site is completed, it will provide a key connection point to the existing and emerging pedestrian and bicycle trail network in the immediate area. Plant materials are drought tolerant, well distributed around the site, and add visual interest. However, staff believes further refinement of the landscape plan for the new street and along the south boundary of the site is necessary to ensure the selection of tree and their placement are appropriately considered. Staff believes these adjustments are minor in nature and easily addressed during the plan-check review process. A condition addressing this matter is included in the proposed resolution.

#### Parking and Parking Management Plan

As indicated above, parking for the project meets the requirements of the NMDSP. Parking spaces are available across the site and are in close proximity to the units. Since the internal street at the center of the project is private, the applicant is allowed to use all parallel parking spaces for short-term guest parking. The developer may also utilize street parking on Huntington Drive adjacent to their site for short-term guest parking as well, but may not assign any of the spaces on the public street to any residential units.

Lastly, the required Parking Management Plan (PMP) for the project will be instrumental in ensuring that parking for the project is controlled in a professional manner at all times. Ultimately, the successful implementation of the PMP rests entirely on the owner and the Property Management Company's diligent efforts to administer all of its provisions. The applicants are aware of the City's concerns about properly addressing parking. A condition of approval requiring the completion and City approval of a PMP prior to the issuance of building permits for the project is included in the resolution of approval prepared for the project.

#### Property Maintenance/Management

An on-site, professional property management company with an on-site manager is required for the project. The property management company will oversee all management, leasing, and maintenance functions for the community. As part of the project approval, the applicant will also be required to record an *Operations Agreement* against the entire property providing for the perpetual maintenance of all buildings and improvements, including roadways, retaining walls, drainage facilities, and water and sewer systems.

City staff is also working with a consultant to implement a Community Facilities District (CFD), which would overlay the subject site. The establishment of a CFD has been a requirement since the NMDSP was adopted to provide the means for collecting funds to maintain public improvements such as curb and gutter, sidewalks, paving, streetlights, street sweeping, signage, street furniture, and landscaping in the public right-of-way. Completion and City approval of the CFD will be a condition of approval and required prior to completion of the project.

#### Public Comment from Surrounding Property Owners

At the June 27, 2022, Planning Commission meeting, three persons representing property owners from the Huntington Drive community west of the project site provided public comment. The speakers, Al Villanueva (Arbol Verde Preservation Committee), Lydia Henry, and Steven Schulz, spoke on behalf of the residents and made the following points:

- Insufficient notice to properties in the City of Claremont across Claremont Boulevard (outside the mandatory 300' notification radius).
- Concern about traffic (vehicles and trucks) and speeding resulting from the eventual connection of Huntington Drive from Monte Vista Avenue to Claremont Boulevard. Some of the attendees expressed their preference to keep Huntington Drive closed to through traffic.
- Negative air quality impacts to existing residences and users of the Pacific Electric Trail from new vehicular traffic on Huntington Drive.
- Lack of sewer service in their area nor the means to obtain it on their own, stating this situation limits the opportunity to make improvements to their properties.
- Neighborhood security and proper management at the new project.
- Adverse historical impacts to the neighborhood and their efforts to preserve the area.
- Need for more time to obtain and read the Environmental Impact Report (EIR) and Supplemental EIR (SEIR) documents related to the North Montclair Downtown Specific Plan.

In response to the comments made, representatives from Trammel Crow Residential (TCR) offered to meet with the residents before the item was scheduled for City Council consideration.

#### **Meeting at El Barrio Park (Claremont)**

At the request of Mr. Villanueva representing local residents, Directors Diaz and Heredia attended a meeting on July 5, 2022, at El Barrio Park (Claremont) to speak with approximately 15 residents from Huntington Drive and other interested persons from the surrounding area regarding the project. During the meeting, residents reiterated the concerns identified at the Planning Commission meeting, and asked new questions regarding eminent domain and future improvements. Directors Diaz and Heredia, responded to the questions raised, and noted that the eventual western extension of Huntington Drive has been a goal of the NMDSP since its adoption in 2006.

In addition, City staff informed the group that the City had retained a consultant to design Huntington Drive beyond the Montclair Station project as part of a separate, but related, project. This process would begin shortly and directly involve the residents on Huntington Drive, the cities of Claremont and Upland, and the San Bernardino County Transit Authority (SBCTA), which owns the Pacific Electric Trail. Currently, the Montclair properties on Huntington Drive have no direct east access to the remainder of the City and are only accessible from Claremont Boulevard to the west in the City of Claremont.

Lastly, in response to a Public Records Act request from Mr. Villanueva, staff provided copies of the NMDSP and related environmental documents (EIR and SEIR) on July 6 and 7, 2022, as requested. Due to the size of the documents, staff sent Mr. Villanueva electronic versions or links to the documents.

### **Meeting at Montclair Civic Center**

A second meeting to discuss the project with representatives from TCR and City staff was held on July 27, 2022, at 4:00 p.m. in the Theater Room at the Montclair Civic Center. As representatives for the Huntington Drive community, Director Diaz sent notice of the meeting via email on July 21, 2022, directly to Mr. Villanueva and Ms. Henry, and spoke to Mr. Johnny Dominguez by telephone requesting them to notify residents of the meeting. Due to other commitments, Mr. Villanueva and Ms. Henry indicated they could not attend. Mr. Villanueva had requested to be the contact for the residents who attended the meeting at El Barrio Park.

At the July 27, 2022, meeting three individuals associated with the Huntington Drive neighborhood attended the meeting including Mr. Dominguez and Mr. and Mrs. Gonzales. During the meeting, Director Diaz and TCR representatives, Alec Schiffer and Reese Petersen, presented an overview of the proposed project, reviewed plans, and responded to questions. Also in attendance were Director of Economic Development Fuentes, Director of Public Works Heredia (via telephone), and Senior Planner Gutierrez.

Mr. Dominguez indicated he was not opposed to the Montclair Station project, but that he preferred Huntington Drive west of the proposed project stay as is without being connected. He also provided copies of written concerns from him and Ms. Henry regarding the potential impacts of making Huntington Drive open to vehicular access.

Staff explained that the portion of Huntington Drive to the north of the Montclair Station project would be 40 feet in overall width and classified as a neighborhood street with a speed limit of 25 miles per hour. The street would have two lanes of travel (one per direction) with parking only on one side (south) adjacent to the project site. The street parking spaces would be for public use and would not be assignable to any residents. TCR representatives indicated their shared concerns for a well-planned area and safe street improvements, including the use of appropriate traffic calming measures (e.g., speed humps, signs, etc.) to keep speeds low and maintain orderly traffic flow. TCR also indicated their support for the following:

- An extension of the sewer line serving their project to the west boundary of the site to provide a possible future connection point at least for a couple of properties at the east end of Huntington Drive.
- A contribution of funds to prepare a technical Sewer Study to evaluate options for providing sewer service to the properties on the south side of Huntington Drive.

- A recognition of the historic Huntington Drive community by including or contributing to the placement of interpretive/commemorative signs, or public art in the area.
- A fully landscaped and tree-lined street for the full length of Huntington Drive, beginning with their project that adds new trees and landscaping to visually improve their site and contribute to the improvement of air quality for the area.
- A payment of a fair share contribution to street improvements at the intersection of Huntington Drive and Claremont Boulevard necessitated by the separate street improvement study/plan for the existing portion of Huntington Drive.

Findings for Tentative Parcel Map No. 20474

- A. The proposed subdivision is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. Proposed buildings on the site are generally oriented, spaced, and designed to allow for access to adequate light and air. Each unit will have operable windows to allow for passive cooling provided by seasonal winds. Currently, the site is barren with no trees or vegetation but when completed the project will include several landscaped open space areas at the center of the site, courtyards adjacent to each building, a community building and pool where trees and vegetation will provide shade, air filtering, and other environmental benefits. Moreover, the project will provide tree-lined streets and a public park for shade, air filtering, and other environmental benefits.
- B. The proposed subdivision and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan") and the North Montclair Downtown Specific Plan (NMDSP):
1. The Tentative Parcel Map would provide for the development of the site with land uses that are consistent with the land use classification for the subject site by the General Plan. The overall goal of the General Plan is to promote good planning practices and orderly development within the City and to recognize the potential of specific areas for special treatment. More specifically, the "Planned Development" land use classification of the site by the General Plan recognizes the proximity to the existing transit center and the potential for development into a viable and thriving transit-oriented community. Therefore, the proposed project's design and improvements would be consistent with the General Plan land use designation for the site.
  2. The Tentative Parcel Map would provide for land uses compatible with the "Corridor Residential" land use classification for the subject site in the NMDSP. Moreover, the map and project design is of a high quality and consistent with the high expectations for improvements for projects within the NMDSP planning area.
- C. The subject site is physically suitable for the type and density of development proposed in the Tentative Parcel Map given the overall size of the property. The site is 9.96 acres in overall area, is of a configuration that has sufficient width and depth, and has no drastic slope or grade elevation issues to inhibit orderly site development. Moreover, the project will provide adequate and well-situated open space areas between the proposed structures in the project, and sufficient setbacks as required by the NMDSP and from adjacent single-family residential units on the west boundary of the site. When completed the project site will be connected to fully improved

streets that provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public street within and serving the project will be fully improved and serve to implement the eventual goal of a linked street system that promotes walkability and connectivity to adjacent properties and uses, including the Transcenter and future Gold Line extension platform.

- D. The subdivision design and improvements proposed in the Tentative Parcel Map is not likely to cause substantial environmental damage nor substantially injure fish, wildlife, or their habitat. The site is surrounded by urban development, streets, and regional railways, does not contain any bodies of water, and is not linked to any wildlife corridors. Although the site abuts the existing San Antonio Creek flood control channel, the project will not affect the facility in any way. Lastly, the project site is completely devoid of any existing plant communities and does not contain any known habitats of significance including rare or endangered species of plant, animal, or insect life. New trees and landscaping will be added with the project.
- E. The subdivision design and type of improvements proposed in the Tentative Parcel Map are not likely to cause serious public health problems because all development and public improvements are subject to the requirements of all applicable standards and codes including the zoning and building codes. As a condition of approval, the applicant is required to submit an acoustical analysis demonstrating that interior noise standards of each unit will comply with Municipal Code requirements and applicable Mitigation Measures identified in the Montclair Supplemental Environmental Impact Report (SEIR) for the NMDSP.
- F. The subdivision design and type of improvements proposed in the Tentative Parcel Map will not conflict with any easements acquired by the public at large for access through or use of the subject site. There are no existing easements allowing for public access on or through the subject site.
- G. The discharge of waste into the existing sanitary sewer system from the development proposed in the Tentative Parcel Map will not cause a violation of existing requirements prescribed by the regional water quality control board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in the Monte Vista Avenue rights-of-way and are in close proximity to the site to facilitate ease of connection.

#### Precise Plan of Design Findings

- A. The proposed 302-unit residential apartment project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and specifically the "Corridor Residential" (CR) land use designation of the North Montclair Downtown Specific Plan. The CR land use district allows for higher density residential projects in appropriate locations as indicated on NMDSP land use map. The proposed project will be on a large vacant parcel that when developed will provide both pedestrian and vehicular links to the west in the City and the cities of Claremont and Upland, and be within easy walking distance of the Montclair Transcenter and other developed streets within the NMDSP planning area.
- B. The proposed project would result in a significant improvement to the appearance of the area by developing a large vacant site that formerly was once home to an unattractive and noisy industrial use into a well-designed residential community. The project will make efficient use of the vacant dusty site and comply with the intent and

applicable development standards of the NMDSP. The 302 dwelling units on the 9.96-acre site amounts to 30 dwelling units per acre consistent with the "Corridor Residential" 30-50 dwelling units per acre density range.

- C. The site plan, building form, massing, and heights are appropriate for the site and will contribute to the advancement of the design goals and policies and ongoing formation of the streetscape and development pattern envisioned by the NMDSP. Building placement, orientation to the streets, all work to create a distinctive living environment.
- D. The proposed architectural design of the project as indicated on submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP. Features and architectural details, including the distribution of windows and doors, which add appropriate visual interest, pedestrian scale, result in a distinctive and pleasing appearance. The use of quality exterior materials and finishes, appropriate lighting and landscape materials, all complement the project.

### Public Notice

This item was advertised as a public hearing in the *Inland Valley Daily Bulletin* newspaper on June 17, 2022 for the July 27, 2022 Planning Commission meeting. Per State law, public hearing notices are required for property owners within a 300-foot radius from the boundaries of the site. At the request of City staff, the applicant extended the notice area to include all the properties on Huntington Drive up to Claremont Boulevard. By extending to Claremont Boulevard, the notice area was 200-500 feet further to the west and northwest of the project site where adjacent residences are located. At the time the Planning Commission report was prepared, Mr. Villanueva and the owner of an adjacent multi-family development in the City of Upland contacted staff to inquire about the project.

Although the cities of Claremont and Upland do not have jurisdiction over the proposed project, staff sent a copy of the staff report via email to their respective Directors of Community Development. To date, staff has not received new comments from these communities regarding the Montclair Station project.

Notice of the City Council's August 15, 2022 public hearing and review of the project proposal was published in the *Inland Valley Daily Bulletin* newspaper on August 5, 2022. Public hearing notices were mailed on August 4, 2022, to the same property owners within the area described above and those who attended subsequent meetings and/or emailed staff with an interest in the project and provided a mailing address. Since the June 27, 2022 Planning Commission meeting and subsequent neighborhood meetings on July 5 and 27, 2022, staff has received three written comments about the proposal, which are attached to the report as Exhibit C.

**FISCAL IMPACT:** Increases in property values from new construction will yield increased property tax revenue. Other revenue sources include utility user taxes related to new residents using utility services, vehicle license fees related to the registration of vehicles to City addresses, and sales taxes generated from new residents shopping and dining locally. Further, building, planning, and engineering fees paid by the developer will reimburse the City for costs associated with entitling the project; park development fees for public green space; and traffic/development impact fees, which largely benefit the San Bernardino County Transportation Authority. School impact fees that benefit the Ontario-Montclair School District and Chaffey Joint Union High School District, and

impact fees by the Inland Empire Utility Agency (IEUA) will provide funds for IEUA facilities expansion, with 10 percent of this fee collected for expansion of the City sewer system.

Lastly, to offset the cost of providing City services delivered to the project such as street maintenance and public safety services, a Community Facilities District (CFD) for the project is required. The project's location near the Montclair Police Station (northwest corner of Arrow Highway and Monte Vista Avenue) and Fire Station No. 151 (southeast corner of Arrow Highway and Monte Vista Avenue) is anticipated to minimize costs associated with demand for, and/or delivery of, public safety services.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3366 making findings pursuant to the California Environmental Quality Act and approving a Precise Plan of Design for a proposed 302-unit residential apartment project within the North Montclair Downtown Specific Plan on 9.96 acres located approximately 200 feet west of the intersection of Monte Vista Avenue and Richton Street, west of the San Antonio Creek Channel at 4700 Huntington Drive.

### **Attachments to Report**

1. Exhibit A - Tentative Parcel Map No. 20474
2. Exhibit B - Montclair Station Design Plans (Selected Images)
3. Exhibit C - Public Comments Received
4. Resolution No. 22-3366
5. Exhibit A to Resolution — Conditions of Approval



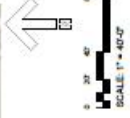
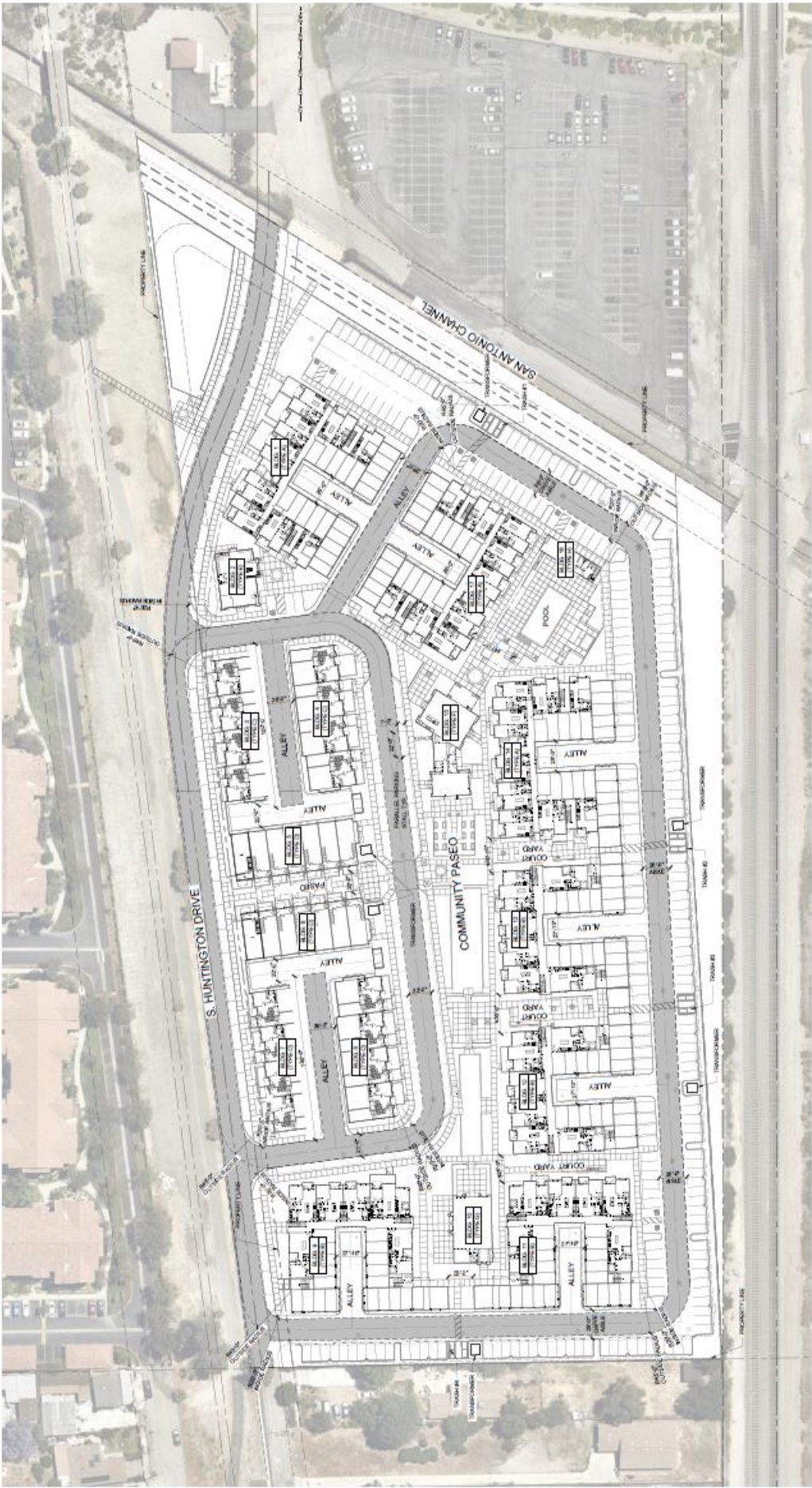




EXHIBIT B

# MONTCLAIR STATION

MONTCLAIR, CA



FIRE MASTER PLAN 1

**A1.1**  
FIRE MASTER PLAN

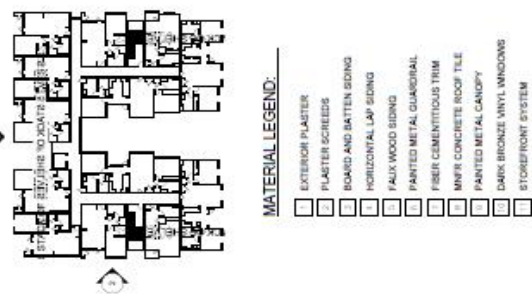
1ST SUBMITTAL 10/14/2021  
2ND SUBMITTAL 04/06/2022  
REVISED

**MONTCLAIR STATION**  
MONTCLAIR, CA

ALL RIGHTS RESERVED  
MONTCLAIR STATION APARTMENTS, LLC  
SUNLAND, CALIFORNIA 91761  
REVISED

**MONTCLAIR STATION**  
APARTMENTS, LLC





RIGHT ELEVATION 2



- MATERIAL LEGEND:**
- EXTERIOR PLASTER
  - PLASTER SCREEDS
  - BOARD AND BATTEN SIDING
  - HORIZONTAL LAP SIDING
  - FAUX WOOD SIDING
  - PAINTED METAL QUADRIBAL
  - FIBER CEMENTITIOUS TRIM
  - MFR CONCRETE ROOF TILE
  - PAINTED METAL CANOPY
  - DARK BRONZE VINYL WINDOWS
  - STOREFRONT SYSTEM



FRONT ELEVATION 1

**A2.3**  
BLDG. A - EXTERIOR ELEVATIONS

1ST SUBMITTAL  
2ND SUBMITTAL  
REVISED

**MONTCLAIR STATION**  
MONTCLAIR, CA

MONTCLAIR STATION  
APARTMENTS, LLC

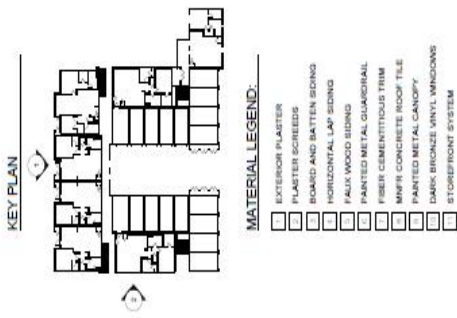
ARCHITECTURE  
DESIGN  
CONSULTANTS



RIGHT ELEVATION 2



FRONT ELEVATION 1



- MATERIAL LEGEND:**
- ☐ EXTERIOR PLASTER
  - ☐ PLASTER SCREEDS
  - ☐ BOARD AND BATTEN SIDING
  - ☐ HORIZONTAL LAP SIDING
  - ☐ FAUX WOOD SIDING
  - ☐ PAINTED METAL GUARDRAIL
  - ☐ FIBER CEMENT/TITANUM TRIM
  - ☐ MVR CONCRETE ROOF TILE
  - ☐ PAINTED METAL CANOPY
  - ☐ DARK BRONZE VINYL WINDOWS
  - ☐ STOREFRONT SYSTEM



**A3.3**

BLDG. B - EXTERIOR ELEVATIONS

1ST SUBMITTAL 10/14/2021  
 2ND SUBMITTAL 04/06/2022  
 REVISED

**MONTCLAIR STATION**  
 MONTCLAIR, CA

MONTCLAIR STATION APARTMENTS, LLC  
 1001-4022D1  
 04/06/2022



# EXHIBIT C

ARBOL VERDE PRESERVATION COMMITTEE

270 Claremont Blvd. Upland, California 91786

[avpeacemaker@yahoo.com](mailto:avpeacemaker@yahoo.com)

**July 7, 2022**

**Michael Diaz  
Community Development Director  
City of Montclair  
5111 Benito Street  
PO Box 2308  
Montclair, CA 91763**

**Cc: Monica Heredia  
Director of Public Works/City Engineer**

**Dear Michael and Monica,**

**On behalf of the Arbol Verde Preservation Committee and concerned residents living near the Montclair Station development, I want to graciously thank you for meeting with us July 5, 2022 at El Barrio Park. Both of you were forthright and provided important answers to tough questions asked by the residents and property owners of the historic Arbol Verde Mexican American neighborhood, especially those residents living in the Montclair section of San Bernardino County barrio.**

**Per our telephonic conversation Mike yesterday 7/6, the Arbol Verde Preservation Committee is committed and looking forward towards working together in a collaborative manner with the City of Montclair and the applicant of the Montclair Station Development to mitigate issues of concern that were expressed in the 7/5/2022 meeting.**

**The Arbol Verde Preservation Committee was established in 1970 as the “El Barrio Park Committee” by Chicano activists during the Mexican American Student Movement of the mid 1960’s.**

**After we were successful in building El Barrio Park in July 1972, the Chicano activists from the Montclair/Upland/Claremont East Barrio transformed into the Arbol Verde Preservation Committee to preserve the history and culture of the**

**neighborhood and prevent further intrusions by the Claremont Colleges, specifically Claremont McKenna College.**

**In 2011, AVPC and CMC came together and established an agreement and covenant that would protect the neighborhood from further gentrification.**

**AVPC has been representing the best interests of the traditional barrio residents who live in the Montclair and Upland sections of the barrio since 1969 and we celebrated our 50-year anniversary as the most effective grass roots organization in 2019. We are not a 501C 3 organization.**

**We received the information requested by the residents today. Thank you Mike.**

**I will spend the next week reviewing the information, then have a planning meeting with the residents to schedule a meeting with the city and applicant commence a collaborative future relationship with the City of Montclair and the applicant of the Montclair Station to make an effort to mitigate problematic issues with the project that will hopefully result in a satisfactory outcome for all parties.**

**Michael and Monica, we thank you for the meeting last week and we look forward to meeting with you soon.**

**Respectfully,**

A handwritten signature in black ink, appearing to read 'Alfonso Villanueva', written in a cursive style.

**Alfonso "Al" Villanueva  
Chairperson, Arbol Verde Preservation Committee**

**Cc: Arbol Verde Residents**

North Montclair Downtown Specific Plan

H Dr is a "preferred street" in 2017 MNDSP and subject to "allowed street types."

Slow residential street requires (unless exception given):

30' right of way for two 8' traffic lanes and 7' parking for each side.

In addition to 30' right of way, 11' on each side is required for sidewalk and planting.

H Dr curb to curb is 24'. From north curb to edge of asphalt of Pacific Trail is 11'.

This leaves room for the following:

Two lanes of traffic with 8' each and parking on one side that needs 7' for a total of 23'. (The part of H Dr alongside Mont. Stat. has parking on only one side.)

(An exception by the Dir of Pub Wks or Comm Dev Dir must be given for only one side of parking.)

The northern 11' for sidewalk and planting as required by NMDSP will have to come from the 11' between the curb and edge of bike path. This will likely mean the elimination of the sidewalk on the north side.

The southern 11' will come from the easement Montclair presumably already has.

If this road goes through as a slow residential street, it will become a short cut thoroughfare.

THAT IS NOT SAFE.

It is not safe to put this road through as it is planned.

To put a wider street through means moving the trail or seizing by eminent domain the property of residents Montclair hasn't even bothered provide them sewer hookups so they don't have to have septic tanks.

Or it requires no parking on both sides which will cause vehicles to go even faster and eliminate, not reduce, street parking for residents. That is unacceptable and an equity issue.

All if this assumes parking for the trail is eliminated.

FROM: JOHNNY DOMINGUEZ & LYDIA HENRY

7-27-22  
4:40 P.M.



**Michael Diaz**

---

**From:** Mohammad Nash <mohammadnash@gmail.com>  
**Sent:** Wednesday, August 10, 2022 4:20 PM  
**To:** Michael Diaz  
**Subject:** Parcel Map 20474  
**Attachments:** Letter to City of Montclair.docx

**Letter to City of Montclair**

To Whom it may Concern,

We are the Nash family, located at 4697 Huntington Dr. Montclair, CA 91763. We are writing concerning Parcel Map No. 20474, the Montclair Station.

We are concerned with the potential traffic and environmental problems on Huntington Drive. Our property will be directly located next to the proposed project. We feel that Huntington Drive is too small and narrow to accommodate the potential traffic associated with the apartments. With over three hundred potential units, there is a potential that residents living on Huntington Drive will be blocked out of their driveway when leaving or coming from their homes, especially our home.

We ask that you consider the possible installation of a roundabout or another form of traffic easement when residents arrive from Monte Vista. College Park Apartments north of the proposed project contains a similar roundabout, and we would like you to consider the residents of Huntington Drive when they arrive in and out of their homes. Also, there is a picking trail that several ages have used. It will be hazardous to them, especially young pikers.

Thank you for reading our letter.

Mohammad Nash family  
702-875-2294  
[mohammadnash@gmail.com](mailto:mohammadnash@gmail.com)

## **Letter to City of Montclair**

To Whom it may Concern,

We are the Nash family, located on 4697 Huntington Dr. Montclair, CA 91763. We are writing concerning Parcel Map No. 20474, the Montclair Station.

We are concerned with the potential traffic and environmental problems on Huntington Drive. Our property will be directly located next to the proposed project. We feel that Huntington Drive is too small and narrow to accommodate the potential traffic associated with the apartments. With over three hundred potential units, there is a potential that residents living on Huntington Drive will be blocked out of their driveway when leaving or coming from their homes, especially our home.

We ask that you consider the possible installation of a roundabout or another form of traffic easement when residents arrive from Monte Vista. College Park Apartments north of the proposed project contains a similar roundabout, and we would like you to consider the residents of Huntington Drive when they arrive in and out of their homes. Also, there is a picking trail that several ages have used. It will be hazardous to them especially young pikers.

Thank you for reading our letter.

Mohammad Nash family  
702-875-2294  
mohammadnash@gmail.com

**RESOLUTION NO. 22-3366**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR MAKING FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND APPROVING TENTATIVE PARCEL MAP NO. 20474 AND A PRECISE PLAN OF DESIGN UNDER CASE NO. 2021-33 FOR A 302-UNIT RESIDENTIAL DEVELOPMENT ON 9.96 ACRES WITHIN THE NORTH MONTCLAIR DOWNTOWN SPECIFIC PLAN (APN 1007-722-03)**

**WHEREAS**, Montclair Station Apartments LLC, filed an application on October 21, 2021, for a Tentative Parcel Map, and Precise Plan of Design under Case No. 2021-33 (Application) to construct a 302-unit apartment community on 9.96 acres; and

**WHEREAS**, the application applies to the 9.96-acre site located approximately 200 feet west of the intersection of Monte Vista Avenue and Richton Street, west of the San Antonio Creek Channel. Current address is 4700 Huntington Drive (APN 1007-722-03); and

**WHEREAS**, the project site is located in the "Corridor Residential" zone of the North Montclair Downtown Specific Plan (NMDSP) area; and

**WHEREAS**, Tentative Parcel Map No. 20474 would subdivide the 9.96-acre project site into three numbered parcels (one for a public park) and one lettered parcel (for road purposes) for the project, within the North Montclair Downtown Specific Plan (NMDSP) area; and

**WHEREAS**, a Precise Plan of Design is requested for the overall site plan, floor plans, elevations, colors, materials, conceptual landscape plan, and associated site plan improvements for the 302-unit residential development; and

**WHEREAS**, the proposed development consists of 14 multi-story residential buildings (some with attached garage units), four single story amenity buildings, a 0.43-acre public park/open space area, and on-site parking; and

**WHEREAS**, on May 15, 2006, the Montclair City Council adopted the NMDSP, establishing guidelines for development on numerous parcels of land totaling approximately 150 acres in area; and

**WHEREAS**, on March 20, 2017, the Montclair City Council approved an amendment to the NMDSP, thereby expanding the boundaries and updating the standards of the NMDSP; and

**WHEREAS**, on March 20, 2017, the City Council certified Supplemental Environmental Impact Report (SCH# 2016101001) ("SEIR") for the updated and amended North Montclair Downtown Specific Plan (hereafter Specific Plan); and

**WHEREAS**, in connection with its consideration of the SEIR, the City Council adopted a Mitigation Monitoring and Reporting Program, and adopted a Statement of Overriding Considerations for the updated and amended Specific Plan; and

**WHEREAS**, in connection with its consideration of the SEIR, the City Council adopted a Mitigation Monitoring and Reporting Program, and adopted a Statement of Overriding Considerations for the updated and amended Specific Plan; and

**WHEREAS**, pursuant to State CEQA Guidelines, Section 15162, the City of Montclair (City) has prepared an analysis of the proposed Montclair Station project modification to determine whether subsequent environmental review is required in light of the North Montclair Downtown Specific Plan Amendment Project Final Supplemental Environmental Impact Report (SCH No. 2009091021); and

**WHEREAS**, based on the consistency analysis prepared, the Montclair Station project would be consistent with the original North Montclair Downtown Specific Plan Amendment Project Final Supplemental Environmental Impact Report (SCH No. 2009091021) certified by the City of Montclair City Council on March 20, 2017 [Resolution No. 17-3147] and would not result in new impacts or any substantial changes to any significant effects previously, identified; and

**WHEREAS**, no subsequent environmental review is required for the Montclair Station project; and

**WHEREAS**, on June 17, 2022, the City gave public notice of the City of Montclair's Planning Commission's ("Planning Commission") public hearing on the proposed project by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project boundaries; and

**WHEREAS**, at the request of City staff, the notice area was expanded to include all the properties on Huntington Drive up to Claremont Boulevard. By extending to Claremont Boulevard, the notice area was 200-500 feet further to the west and northwest of the project site where adjacent residences are located; and

**WHEREAS**, on June 20, 2022, the City Council's Real Estate subcommittee previewed the project proposal; and

**WHEREAS**, on June 27, 2022, the Planning Commission conducted a duly noticed public hearing on the proposed project at which time all persons wishing to testify in connection with the project were heard and said Tentative Parcel Map and Precise Plan of Design for the proposed 302-unit apartment community was fully studied; and

**WHEREAS**, on June 27, 2022, the Planning Commission, by a vote of 5-0-0 recommended that the City Council approve Tentative Parcel Map No. 20474 and Precise Plan of Design subject to the conditions of approval contained in the Draft City Council Resolution No. 22-3366 prepared for the project, pursuant to Planning Commission Resolution No. 22-1968; and

**WHEREAS**, on August 5, 2022, the City gave public notice of the City Council's public hearing by advertisement in a newspaper of general circulation, and posted the public notice at City Hall, and mailed to all property owners within 300 feet of the project site; and

**WHEREAS**, the notice area was expanded to include all the properties on Huntington Drive up to Claremont Boulevard. By extending to Claremont Boulevard, the notice area was 200-500 feet further to the west and northwest of the project site where adjacent residences are located; and

**WHEREAS**, the City Council conducted a duly noticed public hearing on the project on August 15, 2022, at which time all interested parties were provided an opportunity to give testimony for or against the proposal; and

**WHEREAS**, staff has found that the subject proposal complies with the guidelines and development standards outlined in the NMDSP; and

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

**WHEREAS**, the City Council finds the requested entitlements to be consistent with the adopted General Plan and the NMDSP and following good planning principles; and

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

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

**SECTION 1.** Based upon the facts and information contained in the application, together with all written and oral reports included for the environmental assessment for the application, the City Council finds that the proposed project is exempt from further environmental review pursuant to State CEQA Guidelines, Section 15162 based on the following findings of fact:

- A. On March 20, 2017, the City Council certified a Supplemental Environmental Impact Report (SEIR) for the amended and updated North Montclair Downtown Specific Plan project.
- B. The proposed apartment community consists of 302 units and is undertaken pursuant to and in conformity with the density and design standards of the NMDSP.

- C. None of the conditions requiring subsequent environmental review called out in State CEQA Guidelines, Section 15162 are present. Specifically,
  - 1. Substantial changes are not proposed in the project that would require major revisions of the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
  - 2. Substantial changes with respect to the circumstances under which the project is undertaken that would require major revisions to the SEIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects have not occurred; and
  - 3. New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the SEIR was certified or adopted, as applicable, showing any of the following, has not come to light: (i) that the project would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those previously analyzed would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.
- D. In addition, and in the alternative, the proposed project is exempt from CEQA pursuant to Government Code Section 65457 because it is a residential development project that implements and is consistent with the NMDSP Amendment Project Final Supplemental Environmental Impact Report.
- E. Based on these findings and all evidence in the record, the City Council finds that no additional environmental review is required in connection with the City's consideration of Case No. 2021-33 for the proposed tentative parcel map and 302-unit apartment community development.

**SECTION 2.** Based on the entire record before the City Council, all written and oral evidence presented to the City Council, and the findings and recitals set forth in this Resolution, the City Council approves Tentative Parcel Map No. 20474 and a Precise Plan of Design under Case No. 2021-33 for a 302-unit apartment community, subject to the conditions of approval set forth in the attached Exhibit "A" and as depicted in the submitted site plan, elevations, and renderings submitted by **Montclair Station Apartments LLC**, and dated April 6, 2022.

**SECTION 3.** Pursuant to California Government Code Section 66410, *et seq.*, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of the Tentative Parcel Map No. 20474:

Findings for Tentative Parcel Map No. 20474

- A. The proposed subdivision is designed, to the extent feasible, to provide for passive or natural heating or cooling opportunities. Proposed buildings on the site are generally oriented, spaced, and designed to allow for access to adequate light and air. Each unit will have operable windows to allow for passive cooling provided by seasonal winds. Currently, the site is barren with no trees or vegetation but when completed the project will include several landscaped open space areas at the center of the site, courtyards adjacent to each building, a community building and pool where trees and vegetation will provide shade, air filtering, and other environmental benefits. Moreover, the project will provide tree-lined streets and a public park for shade, air filtering, and other environmental benefits.

- B. The proposed subdivision and the provisions for its design and improvement are consistent with the General Plan for the City of Montclair ("General Plan") and the North Montclair Downtown Specific Plan (NMDSP):
1. The Tentative Parcel Map would provide for the development of the site with land uses that are consistent with the land use classification for the subject site by the General Plan. The overall goal of the General Plan is to promote good planning practices and orderly development within the City and to recognize the potential of specific areas for special treatment. More specifically, the "Planned Development" land use classification of the site by the General Plan recognizes the proximity to the existing transit center and the potential for development into a viable and thriving transit-oriented community. Therefore, the proposed project's design and improvements would be consistent with the General Plan land use designation for the site.
  2. The Tentative Parcel Map would provide for land uses compatible with the "Corridor Residential" land use classification for the subject site in the NMDSP. Moreover, the map and project design is of a high quality and consistent with the high expectations for improvements for projects within the NMDSP planning area.
- C. The subject site is physically suitable for the type and density of development proposed in the Tentative Parcel Map given the overall size of the property. The site is 9.96 acres in overall area, is of a configuration that has sufficient width and depth, and has no drastic slope or grade elevation issues to inhibit orderly site development. Moreover, the project will provide adequate and well-situated open space areas between the proposed structures in the project, and sufficient setbacks as required by the NMDSP and from adjacent single-family residential units on the west boundary of the site. When completed the project site will be connected to fully improved streets that provide good access and allow for appropriate internal pedestrian and vehicular circulation. The proposed public street within and serving the project will be fully improved and serve to implement the eventual goal of a linked street system that promotes walkability and connectivity to adjacent properties and uses, including the Transcenter and future Gold Line extension platform.
- D. The subdivision design and improvements proposed in the Tentative Parcel Map is not likely to cause substantial environmental damage nor substantially injure fish, wildlife, or their habitat. The site is surrounded by urban development, streets, and regional railways, does not contain any bodies of water, and is not linked to any wildlife corridors. Although the site abuts the existing San Antonio Creek flood control channel, the project will not affect the facility in any way. Lastly, the project site is completely devoid of any existing plant communities and does not contain any known habitats of significance including rare or endangered species of plant, animal, or insect life. New trees and landscaping will be added with the project.
- E. The subdivision design and type of improvements proposed in the Tentative Parcel Map are not likely to cause serious public health problems because all development and public improvements are subject to the requirements of all applicable standards and codes including the zoning and building codes. As a condition of approval, the applicant is required to submit an acoustical analysis demonstrating that interior noise standards of each unit will comply with Municipal Code requirements and applicable Mitigation Measures identified in the Montclair Supplemental Environmental Impact Report (SEIR) for the NMDSP.
- F. The subdivision design and type of improvements proposed in the Tentative Parcel Map will not conflict with any easements acquired by the public at large for access through or use of the subject site. There are no existing easements allowing for public access on or through the subject site.

The discharge of waste into the existing sanitary sewer system from the development proposed in the Tentative Parcel Map will not cause a violation of existing requirements prescribed by the regional water quality control board. The entire project will be required to connect to a sanitary sewage system pursuant to California Plumbing Code and Municipal Code requirements. Sewer mains exist in the Monte Vista Avenue rights-of-way and are in close proximity to the site to facilitate ease of connection.

**SECTION 4.** Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds as follows with respect to the approval of a Precise Plan of Design under Case No. 2021-33:

- A. The proposed 302-unit residential apartment project is consistent with the "Planned Development" land use designation of the City's General Plan Land Use Map, and specifically the "Corridor Residential" (CR) land use designation of the North Montclair Downtown Specific Plan. The CR land use district allows for higher density residential projects in appropriate locations as indicated on NMDSP land use map. The proposed project will be on a large vacant parcel that when developed will provide both pedestrian and vehicular links to the west in the City and the cities of Claremont and Upland, and be within easy walking distance of the Montclair Transcenter and other developed streets within the NMDSP planning area.
- B. The proposed project would result in a significant improvement to the appearance of the area by developing a large vacant site that formerly was once home to an unattractive and noisy industrial use into a well-designed residential community. The project will make efficient use of the vacant dusty site and comply with the intent and applicable development standards of the NMDSP. The 302 dwelling units on the 9.96-acre site amounts to 30 dwelling units per acre consistent with the "Corridor Residential" 30-50 dwelling units per acre density range.
- C. The site plan, building form, massing, and heights are appropriate for the site and will contribute to the advancement of the design goals and policies and ongoing formation of the streetscape and development pattern envisioned by the NMDSP. Building placement, orientation to the streets, all work to create a distinctive living environment.
- D. The proposed architectural design of the project as indicated on submitted plans is well done, attractive, and complementary to recent development in the area. The design is consistent with the architectural style guidelines depicted in the NMDSP. Features and architectural details, including the distribution of windows and doors, which add appropriate visual interest, pedestrian scale, result in a distinctive and pleasing appearance. The use of quality exterior materials and finishes, appropriate lighting and landscape materials, all complement the project.

**SECTION 5.** Pursuant to Section 66412.3 of the Government Code, based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the subdivision and improvements proposed will help the City of Montclair to meet its regional housing needs as the project proposes the construction of 302 residential units, which will help the City meet its identified housing unit RHNA allocation.

**SECTION 6.** Based on the entire record before the City Council and all written and oral evidence presented to the City Council, the City Council finds the nature and extent of the dedications, reservations, impact fees, and other exactions are reasonably related to public needs and roughly proportional to the impacts created by the subdivision and improvements proposed in the Tentative Parcel Map. In addition, several conditions, including conditions relating to the imposition of operational covenants for the rental development are necessary to assure the development maintains compliance with City general plan and zoning standards.

**SECTION 7.** The location and custodian of the documents and any other material that constitute the record of proceedings upon which the City Council based its decision is as follows: Director of Community Development, Community Development Department, City of Montclair, 5111 Benito Street, Montclair, California 91763, or by telephone at (909) 625-9477.

**SECTION 8.** City Council directs City staff to cause a Notice of Determination to be filed and posted with the County Clerk within five working days of the adoption of this Resolution.

**SECTION 9. Effective Date.** This Resolution shall become effective upon its adoption.

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

**ATTEST:**

\_\_\_\_\_  
Mayor

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

I, Andrea Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3366 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

City Council Resolution No. 22-3366  
Case No. 2021-33

Montclair Station - Project Approvals & General Conditions

**GENERAL CONDITIONS**

1. The approval for the Montclair Station project includes the following elements:
  - a. Tentative Parcel Map No. 20474, subdividing a 9.96-gross acre site into three numbered lots (one for a public park), and one lettered lot (for road purposes), related to the development of a 302-unit apartment community on the subject site located approximately 200 feet west of the intersection of Monte Vista Avenue and Richton Street, west of the San Antonio Creek Channel (APN 1007-722-03), with associated on-and off-site public improvements, attached hereto as Exhibit A.
  - b. A Precise Plan of Design (PPD) approving the site plan, floor plans, elevations, colors and materials, conceptual landscape plan, and public park space associated with the construction of the project as described in the staff report and depicted on approved plans on file with the Planning Division and generally depicted in Exhibit B.
2. The above entitlements are granted based upon the maps, plans and elevations submitted by Montclair Station Apartments LLC, and dated April 6, 2022. However, final design review shall be required pursuant to Section 5.1.050.2 of the NMDSP upon the submittal of construction drawings for the project, to review road, trail, building, park, and architectural construction design, details, and standards. Such review is intended to ensure high quality development and to prevent misunderstanding during the construction process. The Director of Community Development shall conduct the review in consultation with the City's reviewing architect. Costs to conduct architectural review shall be reimbursed to the City pursuant to Reimbursement Agreement No. 21-53 between the Owner and the City.
3. This approval shall supersede any and all previously approved entitlements for the subject project site.
4. Any modification, intensification, or expansion of the use beyond that which is specifically approved by the aforementioned entitlements and that is not reflected in the map, plans, and drawings approved with this action by the City Council shall require review and approval by the City Council.
5. In the event that exhibits and written conditions are inconsistent, the written conditions shall prevail.
6. The applicant/owner shall be required to pay any applicable fees as shown below; within five (5) days of approval by the City Council:
  - a. A check in the amount of **\$50**, payable to "Clerk of the Board of Supervisors," to cover the filing fee for the Notice of Exemption (NOE) as required by the California Environmental Quality Act (CEQA).
  - b. A check in the amount of **\$628.11**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law for the Planning Commission review on June 27, 2022; and
  - c. A check in the amount of **\$563.80**, payable to "City of Montclair," to cover the actual cost of publishing a Notice of Public Hearing in a newspaper of general circulation (Inland Valley Daily Bulletin) as required by state law for City Council review on August 15, 2022.
7. In establishing and conducting the subject use, the applicant shall at all times comply with any and all laws, ordinances and regulations of the City of Montclair, the County of San Bernardino and the State of California. Approval of the

Tentative Parcel Map and PPD shall not waive compliance with any such requirements.

8. Applicant/Owner shall comply with all applicable Mitigation Measures as contained in the North Montclair Downtown Specific Plan Amendment Project Supplemental EIR (dated January 2017); including but not limited to mitigation measures regarding Tribal Cultural Resources (Mitigation Measure F and G); and Noise (construction and post construction), etc.
9. Notice to Applicant/Owner/Subdivider: The conditions of approval for this Project include certain fees, dedication requirements, reservation requirements, and/or other exactions more specifically described in the conditions of approval herein. The subdivider/applicant is hereby notified that the 90-day protest period to challenge such items has begun as of the date of the project approval. For purposes of this notice, "project approval" shall mean the date that the City Council approves the application for the Tentative Parcel Map referenced in Condition No. 1, and Precise Plan of Design for the Project. All impact fees shall be due and payable at the time stated in the adopted ordinance, resolution or policy adopting and imposing such fees, or at the time building permits are issued. If the applicant fails to file a protest regarding any of the fees, dedications, reservations, or other exaction requirements as specified in Government Code §66020, the subdivider/applicant shall be legally barred from later challenges.
10. The applicant/owner/subdivider shall reimburse the City for the legal costs associated with the preparation/review of any agreements and covenants required by these conditions prior to the time of their initiation pursuant to Reimbursement Agreement No. 21-53.
11. Precise Plan of Design (PPD) approval shall be valid for a period of one year and shall automatically expire on the anniversary date of City Council approval, unless the applicant is diligently pursuing building plan check toward eventual construction of the project. The applicant/owner shall be responsible to apply for a time extension at least 30 days prior to the approval's expiration date. No further notice from the City will be given regarding the project's PPD expiration date.
12. The applicant/owner shall ensure that a copy of this Resolution is reproduced on the first page of the construction drawings and shall be distributed to all design professionals, contractors, and subcontractors participating in the construction phase of the Project.
13. In the event of transfer of ownership of the property involved in this application, the new owner shall be fully informed of the permitted use and development of said property as set forth by this permit together with all conditions that are a part thereof. These specific requirements must be recorded with all title conveyance documents at the time of escrow closing.
14. Comply with the conditions and requirements of the City of Montclair's Inclusionary Housing Ordinance No. 05-866

***CONDITIONS PRIOR TO THE SUBMITTAL OF A FINAL MAP (Condition Nos. 15-20) Planning/Administration***

15. Prior to the approval of the Final Map by the City Council for the project, the map prepared by owner/subdivider shall complete and/or show the following items:
  - a. Obtain written approval and documentation from the United States Army Corps of Engineers and other affected agencies allowing developer to construct or remove any associated improvements (e.g., walkways, bike path, stairs/ramps, walls, fences, gates, signs, lighting, pedestrian bridge, etc.) necessary to facilitate the construction of the San Antonio Creek Trail Plan along the subject site.
  - b. A dedication of a public access easement to the City of Montclair for the purposes of allowing the general public to access San Antonio Creek Trail along the developers subject site.

- c. Enter into a maintenance agreement with the City of Montclair for maintenance of improvements related to the San Antonio Creek Trail.
  - d. Obtain written approval and documentation from the San Bernardino County Transit Authority (SBCTA) and other affected agencies allowing access and authorizing developers to construct any associated improvements on SBCTA property (ies) necessary for the development of a trailhead public park along the existing easement of Huntington Drive and trail adjacent to the San Antonio Creek Channel to connect to the Pacific Electric Trail.
  - e. A dedication of a 0.43-acre parcel (Lot 3 of TPM No. 20474) to the City of Montclair for development of a public park.
16. A Master Solid Waste Removal Plan (SWRP) for the project is required for City review and approval in consultation with the City's refuse collection provider. The SWRP shall identify the location and size of all facilities and provide a written operational strategy/manual to be used by the property management company for the project. The SWRP shall include and/or address the following elements:
- a. Prevent the accumulation of on-site rubbish, trash, or debris in a manner that is inconsistent with the approved SWRP and/or that degrades the appearance of the site and adjacent street frontages.
  - b. All refuse collection facilities shall be designed in accordance with the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial Organics Recycling (MOR) as established by California Department of Resources Recycling and Recovery (CalRecycle). Sufficient facilities must be provided and maintained for the mandatory recycling of all recyclable materials and food waste/organics.
  - c. No barrels (or other containers) for waste fats, oils, or grease (FOG) shall be stored in refuse collection facilities.
  - d. All refuse collection facilities shall be power washed a minimum of two times per month (or more frequently if needed), by property management staff or by means of a hired company qualified to power wash or steam clean all refuse collection facilities and/or equipment. Such activity shall be performed with proper equipment containing a water recovery system or self-contained unit to recycle the wash (waste) water, as approved by the City's NPDES Coordinator or Environmental Inspector. Inspections of refuse collection facilities shall be subject to routine inspection by the City of Montclair.
  - e. Spills and leaks shall be cleaned up immediately using a spill kit and/or appropriate Best Management Practices (BMP) that utilize absorbents or equivalent "dry" methods.
17. The owner/applicant shall agree to the formation of a new Community Facilities District (CFD) pursuant to the terms of Government Code Section 53311, et seq., the territory of which shall include the Project, for the purposes of the payment of maintenance and operation costs associated with the common landscaping, lighting, public park and easements, and other public improvements located within the Project, including a public safety component. The applicant shall consent to the formation of the CFD prior to the recordation of the Final Map for the Project. The applicant further expressly agrees that failure to form such CFD will result in disapproval of the Project.

The owner/applicant shall also agree that additional areas may be annexed into the CFD, provided, however, that after giving effect to such annexation, the owner, subdivider and applicant is subject only to its fair share of the obligations and costs incurred as a result of the annexation. The subdivider and applicant agree to cooperate fully in any such annexation proceedings.

If, for any reason whatsoever, the Property or portion thereof does not become part of a CFD or if any such CFD that is formed does not provide for the maintenance of the entirety of the improvements within the Property, or any portion thereof, then such improvements shall be maintained by a private property owner, or an adequate alternative reasonably acceptable to the City, to

undertake such work. Costs to implement the CFD shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

18. Owner must consent, in writing, to record a covenant for an Operations & Management Regulatory Agreement – *Montclair Station* (hereafter Regulatory Agreement) against the entire property providing for the perpetual maintenance of all buildings and improvements, including roadways, public easements, retaining walls, drainage facilities, and water and sewer systems. The Regulatory Agreement shall be effective during the lifetime of the Project. Property shall thereafter be maintained in accordance with the property maintenance standards contained in the Montclair Municipal Code.

The Regulatory Agreement shall provide for the perpetual maintenance of all buildings and improvements for the subject multifamily residential project developed in the City for rental purposes. The Regulatory Agreement shall be recorded as a condition, covenant, and restriction on the property in perpetuity unless the City Council agrees to the removal of such covenant in the event of a change in land use. The Regulatory Agreement shall address the management, operations, and maintenance of the multifamily residential project and shall become a Covenant that will run with the land.

Costs for development of the Regulatory Agreement shall be reimbursed to the City pursuant to a Reimbursement Agreement between the applicant and the City.

The Regulatory Agreement shall contain, at a minimum, the following requirements:

- a. On-Site Management

The Owner shall be required to retain the services of an accredited property management company (“Management Company”) holding a real estate broker license pursuant to California Business and Professions Code, Section 10131 et. Seq., and with demonstrated experience in leasing, operating, and maintaining a multifamily residential project. Any Manager or Management Company retained to act as an agent for the Owner shall obtain the prior written approval of the Executive Director Office Public Safety/Police Chief, which approval shall not be unreasonably withheld or delayed, provided the person assigned is a certified Property Manager or an employee of a certified property Management Company. Any changes of the certified professional management company shall be subject to the prior written approval of the Executive Director Office of Public Safety/Police Chief, which approval shall not be unreasonably withheld.

In exercising his/her approval rights hereunder, the Executive Director Office of Public Safety/Police Chief may require proof of ability and qualifications of the Manager and Management Company based upon (i) prior experience, (ii) assets, and (iii) other factors determined by the Executive Director Office of Public Safety/Police Chief as necessary. Furthermore, upon sixty (60) days prior written demand from City with cause, Owner shall remove and replace a Property Manager and/or Management Company. In any agreement with a Property Manager or Management Company (“Management Agreement”), the Owner shall expressly reserve the right to terminate such agreement upon written demand of City with cause. That notwithstanding, City agrees that a request for removal of a Property Manager or Management Company shall be subject to a thirty (30)-day notice of default and a reasonable opportunity to cure before any such termination is effective.

Under no circumstances shall the property owner take on the property management responsibilities for the project, unless such property owner possesses property management accreditation as provided for in this subsection, has demonstrated experience, and is approved by the Executive Director Office of Public Safety/Police Chief.

Subsequent changes in the Management Company or Manager of the Project shall obtain the prior written approval of the Executive Director Office of Public Safety/Police Chief as so indicated above.

- i. Management Obligations-Residential

The Owner shall maintain the legally required presence of an on-site Manager for the residential project pursuant to California Code of Regulations, Title 25, Section 42. The Management Company shall ensure that tenant application and screening practices are developed and enforced, that all rules and regulations are developed and enforced, and that use of all facilities are managed. The Owner, through the professional property management company, will ensure that the Project is well maintained pursuant to the standards developed in the Regulatory Agreement.

ii. **Registration and Management of Rentals**

The Owner, with its Management Company, shall develop all rules, documents, and procedures to assure all rental occupancies of residential units are professionally managed including but, not limited to:

- Application(s)
- Crime-Free Addendum and other required addenda to application
- Tenant screening tools including, but not limited to, (1) credit check including unlawful detainer, and (2) criminal background check.

iii. **Alcoholic Beverages/Controlled Substances**

Tenant rules shall indicate areas where the consumption of alcoholic beverages are permitted and/or prohibited within the Project boundaries.

b. **Security Requirements**

Owner shall provide the following security and security monitoring measures during the term of this Agreement:

- i. Owner shall develop a "Security Plan" acceptable and approved by the Montclair Police Department which, at a minimum, shall include the installation, operation, and maintenance of security cameras throughout the Project (see details in Police Conditions).
- ii. At any time during the term of the Agreement, should the calls for Police service or response at the Project exceed a level reasonably considered normal for projects similar in type and density as determined by the Executive Director Office of Public Safety/Police Chief, during any consecutive two-month period, the Owner shall be required to provide a State-licensed security patrol through a company retained by the Owner.
- iii. The State-licensed security patrol company shall be retained by the Owner, with the prior approval of the Executive Director Office of Public Safety/Police Chief, for a period of time to be determined by the Executive Director Office of Public Safety/Police Chief. The approval of such a State-licensed security company shall not be unreasonably withheld.

c. **Balconies, Patios, and Porches**

Balconies, patios, and/or porches on residential units approved for use as private usable open space must be kept free from being enclosed or covered by a tenant in any way and must not be used for storage purposes. Storage of materials that detract from the appearance of buildings is prohibited in the above-mentioned locations as well as anywhere that is directly visible to the public.

All rental agreements for the project must include a rule preventing the storage of boxes or materials, placement of indoor furniture, visible exercise equipment, hanging clothing, building of enclosures, the

installation of makeshift screening materials, or any other similar item in or on a balcony, patio, or porch.

d. Cable and Satellite Service Equipment

Placement of antennas for radio and television reception may be permitted within a balcony, terrace, deck or patio that is intended for exclusive use of the subject tenant, subject to the following criteria:

- i. For the purpose of this Section, the word "antenna" shall include a single dish antenna, usually in a circular shape with a parabolic curve design constructed of a solid or open mesh surface, not more than two feet (2'-0") in diameter, either surface-mounted or by means of a freestanding tripod that is placed entirely within the permitted areas; and
- ii. Only one (1) antenna per dwelling unit shall be permitted; and
- iii. The method of attachment and or arrangement of said antenna shall be accomplished in the least visually distracting manner as possible.
- iv. No antennas shall be placed, attached, or installed in any common areas of the development including the roof, hallways, common courtyards, walkways, or the exterior walls of the apartment building.
- v. No overhead or external wiring of the antennas shall be permitted.
- vi. Removal of all defunct and previously operating antennas or satellite dishes prior to the installation of new antenna equipment.

e. Parking Management Plan

The Agreement shall provide for the following:

- i. A "Parking Management Plan" shall be required for Project. The Parking Management Plan (PMP) shall identify the parking space(s) for every residential unit in the Project. With the exception of an attached garage for the exclusive use of an identified unit, all parking spaces shall be identified with a unique number that shall be stenciled on the pavement and regularly maintained.
- ii. Any tandem parking spaces identified in the PMP shall be assigned to the same dwelling unit. For purposes of the PMP, each tandem space shall count toward fulfillment of the total requirement of parking spaces for the project.
- iii. Parking spaces in the Huntington Drive public right-of-way may be used by the project for limited time guest parking, but no parking spaces shall be assigned to any dwelling units within the project.
- iv. The PMP must be submitted to the City and approved prior to recordation of the Operations Agreement. Any changes to the PMP shall require new City review and approval of a revised PMP document.
- v. The PMP shall stipulate that no utility trailers, commercial or construction vehicle of any length, buses or passenger vans, watercraft, or recreational vehicles shall be permitted to be stored or parked overnight on any private street and/or parking areas within the complex. "Recreational Vehicle" shall mean recreational vehicles, motor homes, campers, utility trailers, watercraft, travel trailer, truck camper, camping trailer, off-road vehicles, land conveyances, vessels, aircraft, boats, trailers, van conversions, customized trucks, and other similar type vehicles that are designed for human habitation for recreational or emergency purposes, or that require a special driver's license (e.g., noncommercial Class A or Class B) to operate.

- vi. The PMP shall stipulate that any enclosed garage spaces or covered parking spaces provided shall, at all times, be assigned to units within the Project pursuant to the PMP. Storage within a garage shall be allowed only to the extent the garage includes a dedicated storage cabinet or storage area that does not impede or obstruct direct access to the parking space(s) within the garage.
- vii. Any tandem parking spaces identified in the PMP shall be considered a second parking space assigned to the same dwelling unit. Tandem spaces shall only be assigned to and utilized for the parking of registered vehicles assigned to the residents of the same unit. Tandem spaces shall not be assigned and/or rented out to other residents or users.
- viii. The property owner/management company may not introduce, require, stipulate, or incorporate into lease or rental payments a separate fee for any surplus parking that exceeds the minimum threshold for assigned parking based on per-unit parking requirements as specified in the North Montclair Downtown Specific Plan (NMDSP) and the PMP for the project. If parking spaces that exceed the minimum threshold requirement as specified herein are available, the property owner/property management company may apply to the City Council for an amendment to the approved PMP for the project to establish separate monthly fees for each surplus parking space.
- ix. As part of the initial rental application process each potential renter of a unit within the project shall be given written notice by the property management company of the on-site parking and off-site parking conditions and requirements at the complex. All executed rental lease agreements will contain a detailed summary of the PMP as an exhibit and a signed acknowledgement form which records the resident's agreement with the terms of the PMP. In addition, the prospective tenant(s) shall receive an electronic version of the entire PMP, either as an email or other electronic format specified by the renter. The entire PMP shall also be available for review in the office of the on-site management company and available online on the Project's website for residents to view.
- x. Every unit shall be assigned and permitted to use at least one (1) parking space as part of the base rent for each unit, and shall be so stipulated in the Parking Management Plan and subsequent rental/lease agreements.

f. Maintenance, Operation, Preservation, and Repair of Property

Owner, through its Management Company, shall keep the Project well-maintained (including, without limitation, private streets and drive aisles, all buildings and on-site structures; signage; sidewalks; parking lots; parking structures, exterior building mounted and/or site lighting fixtures; landscaping; open space/recreation areas onsite, dog park areas, storm drain system including all storm water treatment devices associated with the Water Quality Management Plan, fencing; foundations and pools, if any; and other Improvements) and shall operate the Project in a businesslike manner; shall prudently preserve and protect both its own and City's interests in connection with the Project, shall not commit or permit any waste or deterioration of the Project; shall not abandon any portion of the Property; and shall not otherwise act in such a way as to unreasonably increase the risk of any damage to the Project. Such maintenance shall include, without limitation, the following:

- i. Keeping the exterior surfaces of buildings painted, plastered, or otherwise appropriately treated to be in sound condition; and
- ii. Replacing broken or severely etched windows and other glass surfaces promptly; and
- iii. Keeping the Project free from any accumulation of debris, graffiti, waste materials (including pet waste); and

- iv. Keeping trees, ground cover, shrubs, and other plant materials trimmed in healthy condition, and replacing missing or dead plant materials; and
- v. Maintaining all exterior light fixtures (building mounted and freestanding) in full operating condition. Non-functioning, broken or damaged light fixtures/support structures shall be promptly repaired and/or replaced with the same fixture type as originally approved; and
- vi. Keeping paved surfaces and other hardscape elements clean and in good condition, free of dirt and grime, gum, or grease, potholes, excessive staining or the unsightly accumulation of leaked motor oil/automotive fluids, significant surface cracks, dangerous uplifted walkways, or other conditions which impede paths of travel; and
- vii. No outdoor pay telephones or vending machines (including delivery lockers) shall be installed on any public street, easement, or park. Vending machines may be allowed within buildings or in private outdoor recreation areas when machines are located out of view to the street and are placed with an alcove space that is architecturally integrated into the design of the building, subject to the satisfaction of the Director of Community Development.
- viii. Prohibiting auto repairs, car washing, storage of unregistered and/or inoperable vehicles, within parking areas of the Project; and
- ix. Keeping the on-site storm drain system in working order and in good repair at all times including the storm water treatment devices associated with the Water Quality Management Plan; and
- x. Refuse collection facilities (e.g., trash chutes, rooms or enclosures) shall be maintained in a sanitary, orderly, and functional condition at all times. Sanitary shall mean free of scattered trash and food debris, spills or splatter on floors and/or walls, free of odors to the highest degree possible, and free of insects and rodents; and
- xi. Keeping all private streets, drive aisles, and exterior parking areas within the Project free of weeds, debris, trash, graffiti, and potholes. Owner shall be responsible for maintenance and repaving of all private street and drive aisle surfaces; and
- xii. The Management Company shall develop and implement rules for maintenance and upkeep of the interior of the rental units.
- xiii. Maintain the Project grounds and adjacent public street parkways free from pet waste and/or damage at all times to deter odors, and maintain sanitary conditions. The Management Company shall:
  - 1. Conduct routine inspection and clean-up activities of the Project site to ensure pet waste is removed and property damage caused by animals is properly repaired and prevented.
  - 2. Notify residents and guests in writing of their responsibility to clean up after their pets.
  - 3. Post signs with specific pet rules around the site as necessary. Sign copy shall be in English and Spanish, and set in a font type (or graphic) which is large enough to be easily read and understood.
  - 4. Provide adequate disposable bag dispensers, or other means of removing feces, and refuse cans for disposal. Trash cans shall be regularly emptied with contents disposed in a proper manner.



xiv. Implement and keep a waste and refuse collection system in good operating order at all times. The Management Company must develop a written policy regarding the method of waste and refuse collection for all tenants and lessees consistent with the approved Solid Waste Removal Plan (SWRP). Each tenant must be informed of the waste and refuse collection system prior to executing a rental agreement or lease. Each tenant must acknowledge their understanding of the waste and refuse collection system in the rental or lease agreement. The Owner may not charge an additional fee related to the type of collection method of waste and refuse. The waste and refuse collection system policy shall be approved by the City.

g. Remedial Actions

In the event the Owner fails to act or perform pursuant to the terms found in the Regulatory Agreement, the City reserves the right to enforce the restrictions imposed by the Regulatory Agreement at the expense of the Owner. The Regulatory Agreement shall make provisions to allow the City enforce the terms of the Regulatory Agreement.

h. Sale or Transfer

Prior to the recordation of the Final Map for the project, the Owner shall record a covenant and agreement against the entire property prohibiting the sale of any individual building within the Project for purposes of rental or lease. The covenant and agreement shall be a part of the Regulatory Agreement required by this Condition and shall be approved by the City Council. It may not be cancelled or amended without City approval.

i. Compliance with Rules

Renters occupying residential units within the Project shall be subject to all rules and regulations developed by the Management Company. The Management Company shall establish a warning and fine system for violation of the rules and regulations. If residential renters of units violate rules and regulations, the renter shall be responsible for payment of such fines for violation of the rules. The rules established by the Management Company for rental of residential units shall include provisions for eviction of tenants for violations of the rules and regulations of the project.

19. The Owner shall consent, in writing, to enter into an agreement to be recorded against the property detailing compliance with the City of Montclair Parkland Dedication Ordinance for the park depicted on approved plans. The proposed Park Land Agreement shall include a requirement for the dedication of a 0.43-acre parcel of land for a public park, a conceptual park design exhibit for that park in compliance with the NMDSP, as well as a description of the proposed park improvements and facilities to be constructed consistent with the Conceptual Landscape and Park Design Plan, and the NMDSP. In addition, the Park Land Agreement shall include a mechanism for determining the amount of credit to be provided to the Owner against in-lieu fees to be paid for the construction of improvements and installation of equipment and/or facilities. Such credit shall be based upon the City's adopted parkland dedication/in-lieu fee schedule. No credit/reimbursement shall be provided in excess of the amount of in-lieu fees that are due to be paid to the City by the Owner. The final construction drawings for the improvements to the park on the project site shall be submitted to the Planning Division during the plan check process for review and approval. No Certificate of Occupancy shall be issued unless, and until, a Certificate of Completion and acceptance has been issued for the park.

20. Initiate the process of working with City staff and representatives of the Arbol Verde Neighborhood Preservation Committee to develop appropriate means of recognizing the historic and cultural significance of Huntington Drive community.

***CONDITIONS PRIOR TO THE ISSUANCE OF BUILDING OR GRADING PERMIT (Condition Nos. 21-163)***

21. The final design review process based on building plans shall be completed pursuant to Section 5.1.050.2 of the NMDSP by the Director of Community

Development in consultation with the City's Reviewing Architect prior to the issuance of building permits. Notwithstanding, certain design review details may require review or field inspection during construction. Costs to conduct architectural review shall be reimbursed to the City pursuant to the Reimbursement Agreement between the Owner and the City.

No changes to an approved set of plans, including the exterior design and materials/finishes of any building, shall be permitted without the expressed approval of the City prior to any actual changes. At the discretion of the Community Development Director, any request for changes or revisions deemed to be significant may be referred to the City Council for review and approval.

22. The Regulatory Agreement (per Condition No. 18) shall be executed the by Owner, and approved by the City Council. Upon City Council approval, the Regulatory Agreement shall be recorded prior to issuance of building permits. As part of the Regulatory Agreement, the PMP shall be adopted by the City Council.
23. The Parkland Agreement shall be executed by the Owner and adopted by the City Council (Condition No. 19).
24. A Solid Waste Removal Plan (SWRP) shall be approved by the City.
25. A Construction Phasing Plan identifying the order in which buildings will be erected on the site must be submitted. (Before a Certificate of Occupancy for each building can be issued, the required amount of parking in a sufficient amount of parking spaces to support all completed residential units).
26. A written report from a qualified acoustical consultant indicating that the project will meet City requirements for exterior and interior noise levels and demonstrate compliance with Mitigation Measures for N2, NOI-1, NOI-2, NOI-3, and NOI-4 as contained in the North Montclair Downtown Specific Plan Amendment Project Supplemental EIR (dated January 2017) shall be submitted.

All sound attenuation measures (i.e. dual-paned glazing, upgraded insulation, etc.) as identified by the approved acoustical report prepared for the project shall thereafter be incorporated into construction drawings submitted for plan check. Maximum interior noise level of all units shall be no higher than 45 dBA.

27. Owner's plans shall provide that all dwelling units (living room and bedroom) and/or commercial/office spaces shall be pre-wired with phone, cable, and satellite connections.
28. Owner shall obtain approval from the Executive Director of Public Safety/Police Chief (or designee) of a Plan to install video surveillance cameras for each building and all public spaces within the development. See Police Department conditions of approval for further details.
29. Owner shall prepare a Photometric Plan for each building indicating the location of all exterior light fixtures (area, building, parking lot, etc.) and the overall illumination levels across the site. All proposed exterior lighting shall comply with the following standards:
  - a. Provide a minimum maintained illumination level of one (1) foot-candle across the site.
  - b. All parking lot and other freestanding light fixtures shall incorporate 90-degree cutoff style luminaires and flat lenses so as to direct illumination downward to the surface to be illuminated and away from public rights-of-way surrounding the subject site.
  - c. Maximum total height for freestanding light fixtures shall be limited to 20 feet, inclusive of the height for concrete bases. Above-grade concrete bases for lights shall be finished with a smooth concrete or by means of a colored stucco matching the primary color and finish of stucco on the buildings.
  - d. All exterior wall-mounted lighting fixtures shall be vandal-resistant and of a design, that complements the architecture of the building.

30. The developer shall submit a fence/wall plan for the entire site including both boundary and internal fence/wall locations. The plan shall specifically address existing conditions at each boundary and provide a complementary design for the project as a whole and the design of adjacent buildings. The plan shall include the following elements or details:
  - a. Specify fence/wall design details, materials, and finishes for review and approval by the Director of Community Development.
  - b. Fences or walls shall be designed to produce an attractive and consistent horizontal "top of wall" finished elevation with minimal and evenly spaced steps along the length of the wall, subject to review and approval by the Director of Community Development.
  - c. Eliminate or prevent the creation of double wall or fence/wall conditions. The applicant shall be responsible for coordinating with the adjacent property owners regarding the replacement of property line walls, if required.
31. All utility services provided to the project shall be provided to the project and placed underground pursuant to Chapter 11.75 -Undergrounding of Utilities - of the Montclair Municipal Code.
32. Indicate the location of any proposed neighborhood mailboxes within the development for review by the Director of Community Development. No mailboxes shall be allowed on public sidewalks, or public easements/spaces. The applicant shall also ascertain any requirements for such mailboxes from the United States Postal Service (USPS) and other delivery services. The City acknowledges that proposed locations for neighborhood mailboxes shall be to the satisfaction of the USPS.
33. Owner shall complete and submit a complete Landscape Documentation Package meeting the intent and design criteria of the Montclair Water Efficient Landscaping and Conservation Ordinance (Chapter 11.60 of the Montclair Municipal Code) as amended by State law. The Landscape Documentation Package shall include the following items for City review and approval:
  - a. Detailed Landscape Concept and Irrigation Plan for the entire site including the public park area; and
  - b. A "Water Budget" meeting State Water Conservation requirements; and
  - c. Landscape Construction Drawings (including a grading plan, irrigation plan, and planting plan); and
  - d. Maintenance manual and schedule to be kept on file and used by the property owner/property management company for reference.
  - e. A copy of the approved plan will be kept on file in order to use at a later date to ensure that the plan was implemented as permitted and maintained as required.
34. Show all automobile surface parking spaces with double-line (e.g. "hairpin") striping. Parking stalls dimensions shall be shall be a minimum of 8'-6" in width as measured to the center of the "hairpin," and a minimum of 18'-0" in length.
35. Continue to work with City staff to refine landscape plan in regard to street tree selections for the Huntington Drive right-of-way and to coordinate with new street improvement plans.
36. Incorporate window details in building plans submitted for plan check which demonstrate compliance with the provisions of Section 5.3.040.F of the NMDSP.
37. Every effort shall be made to locate and/or screen all ground or wall-mounted mechanical equipment including, but not limited to, utility meters (including gas meters), air conditioners, vents, and repair equipment within the building or screened in a manner that is compatible with the architectural design of the building to the satisfaction of the Director of Community Development and

reviewing architect. Wooden lattice or fence-like screens/covers are not appropriate screening materials and shall not be allowed.

38. Owner shall screen all roof-mounted equipment, satellite dish antennas, and other similar apparatus from public view in a manner that is incorporated into the architectural design of each building to the satisfaction of the Director of Community Development and reviewing architect.
39. Exposed conduit or electrical lines shall not be allowed on any exterior surfaces of any building, including electrical lines providing power to exterior signs. Electrical switchgear, meters, etc., shall be screened or housed in an appropriately designed enclosure or other manner to the extent allowed by the utilities.
40. The color of all material used for rain gutters, flashing, and similar purposes shall be consistent with that of immediately surrounding building materials.
41. No outdoor pay telephones or vending machines shall be permitted within the development boundaries (including public spaces), except that vending machines may be allowed within approved outdoor recreational areas dedicated as such for each building. Vending machines within approved recreation areas shall not be directly visible to the street and be installed in an alcove architecturally integrated with a building to the satisfaction of the Community Development Director.
42. Prior to the installation of any signs on buildings, structure, or other non-public areas and structures within the project site, the applicant shall develop and submit an application for a Master Sign Program for the entire project and obtain Planning Division for review and approval. The sign program shall address signs proposed for building addressing and identification, wayfinding, which are placed on non-public areas of the site. All signs shall be consistent with the sign provisions contained in the NMDSP, including the prohibition on the use of exposed raceways for all building-mounted, except as provided for in the NMDSP, if approved by the Director of Community Development.
43. Obtain approval for any directional and or regulatory signs proposed for installation within the public right-of-way, public spaces or easements from both the Public Works and Community Development Directors.
44. Freestanding electrical transformers and Fire Department double detector check assembly equipment shall be screened with masonry walls compatible with the building architecture and/or landscaping to the satisfaction of the Community Development Director and Fire Marshal. Efforts shall be made to place these elements in locations that are as unobtrusive as possible.

### ***Building***

45. The applicant shall comply with the latest adopted California Building Codes, and other applicable codes, ordinances, and regulations in effect at the time of permit application. These applicable codes shall be indicated on the first page of submitted plans.
46. Submit four (4) complete sets of plans including the following:
  - a. Site/Plot Plan;
  - b. Floor Plan;
  - c. Reflected Ceiling Plan;
  - d. Electrical Plans including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;
  - e. Plumbing plans, including isometrics, underground diagrams, water and waste diagram, fixture units, gas piping, and heating and air conditioning.
  - f. Submit two sets of structural calculations and two sets of energy conservation calculations.

- g. Landscaping plans including lighting structures, retaining walls, trash enclosures, and other walls and fences.
  - h. Waste recycling plan, recycling 65% of all construction debris.
47. Provide and clearly indicate on submitted plans disabled-accessible path(s) of travel to the public right-of-way and all required disabled-accessible parking lot signs. Sidewalks, paths-of-travel, and curb cuts shall comply with the requirements of the California Building Code, Title 24. The maximum cross-slope on a sidewalk or path-of-travel shall not exceed two percent (2%). All accessible requirements of the California Building Code shall be followed.
  48. Architect's/Engineer's stamp and "wet" signature are required prior to plan check approval.
  49. Separate permits are required for trash enclosures, accessory structures, site lighting, fencing, and/or enclosure walls.
  50. Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.
  51. Pad certification, line and grade, and compaction reports are required prior to issuance of building permits. The applicant or their designee shall provide a pad certification stating that each structure is in accordance with the approved civil plans as to location and grade height.
  52. Building permits and addresses shall not assigned until the recordation of the Final Map.
  53. Prior to issuance of Building Permits, an approved site plan by the Civil Engineer of Record shall be submitted showing accurate property lines and building placement. No building shall span property lines.
  54. Prior to the issuance of building permits for the project, the applicant shall pay development fees at the established rate. Such fees may include but are not limited to a Transportation Development Fee, Permit and Plan Check Fees, and School Fees. The owner shall pay all required school fees directly to the Ontario-Montclair School District and the Chaffey Joint Union High School District. The owner shall provide a copy of the school fees receipt to the Building and Safety Division prior to permit issuance.
  55. Payment of all outstanding sewer reimbursement fees as imposed by a district, if any, or any assessments shall be required. Contact the Director of Public Works at 909-625-9441 for more information.
  56. Regional Sewerage Supplemental Capital Outlay fees are required in accordance with Section 9.20.440 of the Montclair Municipal Code and the Inland Empire Utilities Agency (IEUA). Contact the Director of Public Works at 909-625-9441 for more information.
  57. Submit detailed plans for all walls, fencing, and gates associated with the project. Any security gates which limit access to buildings shall be equipped with Medeco locks or other acceptable devices to allow access by emergency personnel and utility providers at all times. If access is secured to upper floors within multifamily dwelling unit structures, Medeco locks or other acceptable devices are required.
  58. Construction activity shall only be permitted from the hours of 7:00 a.m. to 5:00 p.m. daily.
  59. All construction work carried out under the review of the Building Division shall be of good quality. The Building Official shall have the authority to enforce the installation of work that is straight, level, plumb, square, etc., as the situation requires. All work shall be well fit and of a durable nature. Every construction material in all cases shall not be below standard for the use applied.
  60. Electrical and fire suppression service shall rise within the interior of the building(s). Roof ladders shall also be located entirely inside the building. Conduits and cables shall be located entirely inside the walls.

61. All mechanical devices and their component parts, such as air conditioners, evaporative coolers, exhaust fans, vents, transformers, or similar equipment, whether located on the ground or on the roof of the structure, shall be concealed on all sides from public view in a manner that is compatible with the architectural design of the building and to the satisfaction of the Planning Division. Provide sufficient number of details (i.e. line of sight drawing, building cross-section, etc.) to demonstrate all equipment is obscured from public view.
62. All roof-mounted equipment, satellite dish antennas, and other similar apparatus shall be screened from public view in a manner incorporated into the architectural design of the building to the satisfaction of the Planning Division. Equipment screening shall be provided to completely cover from view any rooftop equipment. The screening shall completely cover all equipment from view from any part of the public right-of-way.
63. Decorative foam trim shall not be used in areas subject to damage such as entry doors, garage doors, etc. Use of decorative foam shall not be allowed to be used below the second story.
64. All trash enclosures shall be constructed of material consistent with the primary type and color of that used on the building. The construction of such trash enclosure(s) shall conform to City standards and shall have a solid roof complementary to the main building. Black-colored concrete shall be used for the trash enclosure floor and its apron.
65. All landscape planting areas shall have 100 percent irrigation coverage by an automatic irrigation system. Landscape maintenance shall be subject to immediate and periodic inspections by the City. The property owner shall be required to remedy any defects in grounds maintenance and replace any trees, shrubs, vines, or groundcover with a similar species, size, and quantity that are lost due to unauthorized removal, disease, windstorm, or other natural disaster as indicated by the City inspector, within two weeks after notification. Inspections shall be based on automatic landscape irrigation schedule, plant maintenance, weed and rubbish control, landscape plan approval, and any other area that is incidental to grounds maintenance.
66. Construction drawings submitted to the Building Division for plan check review shall comply with Montclair Security Ordinance No. 357; including, but not limited to, adherence to the following standards.
67. The numerical address of the building shall be displayed in a maximum of two locations on elevations as determined by the Director of Community Development. Numerals shall be in a font acceptable to the Director of Community Development, minimum 10 inches in height, minimum 1½ inches in depth, and in a color that adequately contrasts with the background to which they are attached.
68. The facility shall be provided with a minimum maintained illumination level of one (1) foot-candle from dusk until termination of business every business day. During all other hours of darkness, a minimum of one-quarter (.25) foot-candles of illumination shall be maintained at grade.
69. Discharge of wastewater into the sanitary sewer system shall conform to Chapter 9.20 of the Montclair Municipal Code.
70. No soil shall be imported or exported to or from the project site from an adjacent building site or from other sources for construction purposes without first obtaining approval from the City Engineer. A plan satisfactory to the City Engineer shall be prepared to show the proposed haul route within the City. The subject plan shall include provisions for street sweeping and cleanup. Applicant/contractor shall comply with all National Pollution Discharge Elimination System (NPDES) requirements.
71. Underground Service Alert shall be notified 48 hours prior to any excavation at (800) 422-4133
72. All off-site and on-site trenching and excavation shall conform to CAL-OSHA standards. Excavations that exceed five feet in depth require a CAL-OSHA permit.

73. Prior to the commencement of building framing or delivery of any combustible materials to the project site, an all-weather access roadway capable of supporting firefighting apparatus shall be constructed within 150 feet of all structures. All-weather access is defined as base course A.C. pavement to a minimum depth of 2½ inches and having a minimum width of 20'-0". The 20-foot width shall be maintained free and clear of construction equipment, materials, and debris for the duration of construction. The roadway is subject to Fire Department approval prior to commencement of construction.
74. The applicant/developer shall install approved emergency lighting to provide adequate illumination automatically in the event of any interruption of electrical service.
75. Temporary construction and storage trailers placed on the property shall first obtain approval from the Planning and Building Divisions. Before any trailer is set in its location, obtain all permits from the Building Division. Plans and structural calculations will be required for the tie-down devices. Trailers used for public use (and not used for construction only) are required to meet all accessibility requirements for use by persons with disabilities. The trailer will require access to the facility by way of ramps which comply with the California Building Code (CBC) 2019 edition, Chapter 11B, in addition to access to each required use of the trailer.

***Environmental Compliance Conditions***

76. Trash enclosures must be designed in accordance with the provisions of AB 341 Mandatory Commercial Recycling and AB 1826 Mandatory Commercial Organics Recycling as established by California Department of Resources Recycling and Recovery (CalRecycle). Contact Steve Stanton, Engineering Division Manager at sstanton@cityofmontclair.org or call (909) 625-9444 for more information.
77. Submit written documentation from Burrtec Waste Industries, Inc. (Burrtec) indicating that a service agreement has been set up with Burrtec that meets all Mandatory Commercial Recycling Requirements (AB 341) and Mandatory Organics Recycling Requirements (AB 1826) for waste hauling as established by the State of California and that the appropriate number of refuse/recycling dumpsters has been established is required. Submit documentation to Steve Stanton, Engineering Division Manager at sstanton@cityofmontclair.org or call (909) 625-9444 for more information.
78. The future tenant/occupant of the building must complete and submit the City of Montclair's Wastewater Discharge Survey to for review to determine pretreatment/wastewater discharge requirements. Contact Steve Stanton, Engineering Division Manager at sstanton@cityofmontclair.org or call (909) 625-9444 for more information. In the event that the project includes or is required the installation of a grease interceptor, the installation shall conform to Chapter 9.20 of the Montclair Municipal Code.
79. Connection to the City of Montclair Sanitary Sewer System is required. Additional comments may follow pending submittal of plans for plan check review.

***Water Quality Management Plan (WQMP)***

80. The property owner shall be responsible to contract with a qualified firm to inspect and maintain any stormwater treatment devices specified by the approved WQMP, following all WQMP recommendations. It shall also be the responsibility of the property owner to maintain inspection reports and have them readily available for review by City staff upon request. In the event that any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the property owner to correct the deficiency and restore the stormwater treatment device(s) to its original working condition.
81. Owner understands that if the stormwater treatment device is infeasible at proposed location, and an alternative treatment device is proposed that may affect site design project owner may have to revisit with the Planning Department for any revised site changes.

82. Owner understands no permits are issued prior to the approval of the WQMP.
83. Prepare and submit plans for erosion and sediment control. Plans shall include all phases of the construction project, including rough grading, utility and road installation, and vertical construction to the satisfaction of the City Engineer. Contact Steve Stanton, Engineering Division Manager, at (909) 625-9444.
84. At the time of Grading Permit issuance; Post-Construction BMP inspection permit fees associated with the approved WQMP shall be paid. Contact Steve Stanton, Engineering Division Manager, at (909) 625-9444 for further information regarding permit and fees.
85. Prior to issuance of a rough grading and/or precise grading permit, the applicant must:
  - a. Have a City approved WQMP.
  - b. Submit to the Engineering Division an electronic copy of the approved WQMP and erosion and sediment control plans in PDF format.
  - c. Obtain a State Construction General Permit and proof must be shown (WDID Number) on both rough grading plan and precise grading plan.
  - d. Qualified SWPPP Developer and Practitioner contact information must be included on the title page of grading plans.
86. Prior to issuance of Certificate of Occupancy, the applicant shall:
  - a. Submit to the Engineering Division as built drawings as it relates to the WQMP and, provide adequate plan notes identifying grades, elevations for all inlets, outlets, flow lines and basins.
  - b. Submit stamped and signed post construction BMP certification by the Engineer of record, identifying that all BMP's have been installed per plans and specifications.
  - c. Record the WQMP Maintenance Agreement with the County of San Bernardino and provide evidence of said recording to the Engineering Division.
  - d. Provide electronic copy of FINAL WQMP including all as-built drawings, certification forms and, recorded WQMP maintenance agreement as described above.
87. Prior to release of the Certificate of Occupancy for the building, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the NPDES Coordinator that all conditions and requirements of the WQMP have been implemented or complied with. For projects, developments, or properties intended to be leased or sold, developer shall also submit evidence to the NPDES Coordinator that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the WQMP.

***Landscape Conditions Associated with Approved WQMP***

88. Prior to receiving Certificate of Occupancy, the Landscape Architect of record shall submit a Letter of Completion to both Planning Division and Engineering Division.
89. Property Owner/Lessee is required to employ a Bonded and California Licensed C-27 Landscape Contractor to conduct all landscaping on property.
90. Landscape Contractor must have City Business License to operate in the City of Montclair.
91. To ensure the landscaping associated with the stormwater treatment device(s) is maintained properly for the life of the project, the property owner/lessee must



provide to the Public Works Department every third year after receiving the Certificate of Occupancy, a wet stamped letter of certification from a licensed, certified Landscape Architect, or recognized horticulturist organization or business.

92. The certified letter must state that the plants located within the boundaries of and immediately adjacent to stormwater treatment devices are currently in good health and maintained to continue to promote the long-term functional and aesthetic performance of the stormwater treatment device. For example, if the planted component of the stormwater device is designed to control erosion, aid in pollutant capture, or maintain permeability, the plant material must be kept at a level of health and vigor to continually meet these functional requirements.
93. Individuals qualified to submit the certification letter must be able to identify species present and report on their conditions. Providing the original planting design documents to the consulting horticulturist may help them in this process.
94. If mulch is present in the assessment area, this must be noted in the letter along with the current depth of the mulch layer and a description of which areas of the stormwater treatment device are mulched.
95. Five to ten clear and representative site photos showing the condition of the various plant materials located in and adjacent to the stormwater treatment device and any other notable conditions related to the device, printed in color on standard 8.5" x 11" paper, must also be submitted as part of the letter.
96. Representatives of the Public Works Department may follow up with site inspections to confirm the accuracy of certification letters and the overall functional condition of stormwater treatment devices.

#### **Engineering**

97. Subdivider/Owner shall comply with all requirements of the Subdivision Map Act and the Montclair Municipal Code. The owner/applicant shall process any right-of-way dedications, easements or grant deeds required for the development.
98. The tentative map shall expire three years from the date of City Council approval unless extended under Government Code Section 66452.6. The Final Map shall be filed with the City Engineer and shall comply with the Subdivision Map Act of the State of California and all applicable Ordinances, requirements, and Resolutions of the City of Montclair.
99. Parkland dedication to the City and construction of park improvement shall be made pursuant to Condition 19.
100. Payment of transportation-related development impact fees is required. Fees shall be assessed at the rate in effect at the time the fees are paid.
101. Public streets on the tentative tract map shall be dedicated to the City and designed in accordance with the North Montclair Downtown Specific Plan (NMDSP), latest amendment.
102. Private streets on the tentative map shall be designed in accordance with the North Montclair Downtown Specific Plan, latest amendment.
103. A sidewalk layout plan incorporating required square scoring pattern for all public and private streets. The sidewalk layout plans shall comply with the following items:
  - a. The sidewalk plan for this project shall utilize Sidewalk Joint Location (NMDSP Area) – STD No. 114; and
  - b. Coordinate square scoring pattern with curb and gutter control joints; and
  - c. Include sidewalk ramps, driveways, streetlights, and other utility boxes to demonstrate how the square scoring pattern can be implemented to greatest extent possible with only minor to no disruption of said pattern; and

- d. The proper scoring shall be achieved by creating a narrow tooled joint in the wet cement; and
  - e. Finish quality and workmanship shall be to the satisfaction of the Directors of Public Works and Community Development. Unacceptable work shall be removed and reinstalled in an appropriate and acceptable fashion.
104. Street improvement plans are required for all public and private streets. Construction drawings shall be 24" by 36" with City standard title block. Provide details to connect to existing road improvements at the terminus of Huntington Drive on the west side of the subject site including removal of block wall and large tree.
  105. Street names shall be at the discretion of the developer, subject to the approval of the Public Works Director/City Engineer.
  106. All streets public and private shall have sidewalks conforming to Americans with Disabilities Act. Public and private streets shall have sidewalks on each side. Widths and scoring patterns shall conform to City STD No. 114.
  107. Streetlights shall be provided on all public and private streets. The minimum lighting level for all streets shall be to the satisfaction of the City Engineer. Plans shall include point by point foot-candle values arranged in a grid verifying a minimum lighting level of 2 foot-candles throughout every intersection.
  108. Streetlights on public streets shall be owned and maintained by Southern California Edison. The style of luminaire and pole shall be as follows:
    - a. Poles-Ameron "Corsican" pole, 20CT12 for interior streets and 20CT15 for arterials.
    - b. Color-Fillmore 12 (black), exposed finish with Amershield (graffiti coating).
    - c. Luminaires-For interior streets King Luminaire K118LR "Washington" luminaire with standard (#1) finial, color "BK" (black); for arterial roadways, KA63 "Coshocton" twin arm, standard black full gloss.
    - d. Fixtures shall be fitted with reflectors or refractors as necessary to control glare and nuisance light spill onto residential units.
  109. Monument signs shall not be permitted in the line of sight triangles next to driveway locations (see City STD No. 110).
  110. All pavement damaged by excavation will be replaced with permanent pavement per the City Standard for paving and trench repair STD No. 301.
  111. The Applicant shall provide the design and construction of additional streets lights along the project frontage as required by the City Engineer.
  112. All Utilities in the public right of way portion of each street frontage adjacent to the site shall be placed underground. This requirement applies to electrical services (facilities operated at nominal voltages in excess of 20,000 volts not included), transformers and switches, and where technology exists, telephone and cable television facilities as well.
  113. Sewers intended to be maintained by the City of Montclair shall be designed and constructed per Public Works Department standards, and shall be located in public streets or easements dedicated to the City for sanitary sewer purposes. Sewers not constructed per Public Works Department standards shall be constructed per California Building Code and City of Montclair Building Division requirements and shall be privately maintained.
  114. Sewer improvement plans are required for all sewers, public or private, and shall include both plan and profile views on 24" by 36" construction drawings.
  115. Developer shall contribute funds toward the cost of preparing a technical Sewer Study in consultation with the City of Montclair to evaluate options for providing sewer service to the properties on the south side of Huntington Drive.

116. Street, sewer, and storm drain plans shall be submitted to the City Engineer's office for approval. An advance plan check fee, the amount to be determined by the City Engineer shall be required at the time plans are submitted. Construction and acceptance of street improvements, as per the approved plans, shall be required to obtain a release for a Certificate of Occupancy from the Building Division.
117. Approval of the WQMP is required prior to the preparation of grading and/or other improvement plans. Requirements for the WQMP may be obtained from Steve Stanton at [sstanton@cityofmontclair.org](mailto:sstanton@cityofmontclair.org). Requirements of the WQMP may require significant modifications to the approved tentative map. If significant modifications are required, a resubmittal to the Planning Commission and City Council may be required.
118. A grading plan shall be prepared subject to the approval of the City Engineer. The applicant shall submit two (2) copies of a soils and geotechnical report. An erosion control plan is to be included and considered an integral part of the grading plan. Grading plans shall be designed in accordance with City standards and guidelines, and shall be on 24" by 36" sheets.
119. All drainage facilities shall comply with requirements of the approved WQMP.
120. Developer shall participate in the creation of a new Community Facilities District (CFD) for the maintenance of public streets, street lighting, and parkway improvements; street sweeping; and street tree/park tree trimming all within limits or frontages of development, and including a public safety component.
121. Underground Service Alert shall be notified at least 48 hours prior to any excavation. Contact Underground Service Alert at 800-422-4133.
122. Prepare and submit to the satisfaction of the City Engineer a letter of non-interference from any utility company that may have rights or easement within the property boundaries.
123. A Public Works construction permit shall be obtained from the Engineering Division prior to any removals or construction of improvements in the public right-of-way.
124. The Final Map may be submitted for plan checking prior to, in conjunction with, or after the submittal of the public improvement plans. Final Map submittals shall include a preliminary title report, reference deeds, closure calculations, reference maps, and other reference material as may be necessary to check the map. An advance plan check fee, the amount to be determined by the City Engineer, shall be required at the time map is submitted. Prior to approval of the Final Map, a subdivision agreement will be required. The agreement shall contain provisions for performance and payment bonds for all work within the public rights-of-way, and a monumentation bond for corner monuments in accordance with the Subdivision Map Act.
125. Developer shall coordinate with the Army Corps of Engineers the need for the existing bridge structure located 150 feet south of the existing bridge at Richton Street to determine if a new pedestrian bridge to provide access across the San Antonio Creek Channel can be constructed. If feasible, replace existing structure with new prefabricated steel truss pedestrian bridge similar to the one recently installed north of Richton Street.
126. Coordinate with City Engineer the construction of a 15-foot wide multi-use trail on the west side of the San Antonio Creek Channel adjacent to the project site eastern boundary in the existing Flood Control Channel easement (including trees, shrubs, lighting, and amenities) as recommended in the *San Antonio Creek Trail Feasibility Study* approved by City Council on July 18, 2022 subject to Army Corps of Engineers approval.
127. Modify traffic signal at Monte Vista Avenue and Richton Street and install a protective left-turn phase.
128. Work with City staff on future street improvements along Huntington Drive, west of the project site, for possible installation of regulatory traffic signs or traffic calming devices. These improvements would work toward maintaining

Huntington Drive as a Neighborhood Street consistent with the *North Montclair Downtown Specific Plan* and anticipated recommendations of the consultant preparing the *North Montclair Streetscape Master Plan* project that includes the segment of Huntington Drive between the western boundary of the project site and Claremont Boulevard.

129. Contribute a fair share of future roadway improvements along Huntington Drive west of the project site including any signal modification costs required at the west end of Huntington Drive and Claremont Boulevard per the recommendations of the *North Montclair Streetscape Master Plan*.
130. Adjust or abandon existing well on the future park site.
131. Construct a new bridge across the San Antonio Creek channel connecting Huntington Drive and Richton Street to accommodate vehicular traffic accessing Monte Vista Avenue and pedestrians and cyclists accessing the P.E. trail from Monte Vista Avenue and Richton Street.
132. Install no overnight parking signs along Huntington Drive fronting the site.
133. Relocate trail light and modify irrigation at the west end of the Pacific Electric trail at the terminus of existing Huntington Drive.
134. Construct a new driveway, modify access and parking to the City's auxiliary lot including paving, striping and fencing.
135. Install street trees per approved landscape plans.

**Fire**

136. The project shall comply with all requirements set forth by the California Code of Regulations Title 24 Parts 1-12 respectively.
137. The adopted edition of the California Code of Regulations, Title 24, Parts 1 through 12, and the Montclair Municipal Code shall apply at the time the architectural plans are submitted for construction permits.
138. Prior to the issuance of a grading permit a fire department access plan shall be submitted to the City of Montclair for review and approval. The fire department access plan shall comply with the requirements specified by the City of Montclair Guideline for Fire Department Access & Water Requirements for Commercial & Residential Development, and the California Fire Code, Chapter 5.
139. Prior to the issuance of a grading permit, evidence of sufficient fire flow shall be provided to the City of Montclair. The City of Montclair Building and Fire Marshal Water Available/Fire Flow Form shall be utilized.
140. A fire department access road complying with the CFC, Chapter 5 and the approved fire department access plans shall be installed prior to building construction.
141. The fire department access road shall be inspected by Montclair Fire Prevention Bureau prior to building construction.
142. The fire department access road shall remain unobstructed at all times.
143. A fire department connection (FDC) shall be provided and located within 50 feet of a public fire hydrant. The use of a private hydrant may be used with the use of an aboveground check valve to prevent the flow from the FDC back to the fire hydrant, and with the approval of Montclair Fire Prevention Bureau. A minimum of two points of connection to the public water shall be provided for the private fire-line water.
144. A minimum of two points of connection to the public water shall be provided for the private fire-line water.
145. The private underground fire-line system shall be a looped design.

146. The private underground fire-line system shall have indicating sectional valves for every five (5) appurtenances.
147. All required fire hydrants shall be installed and operational prior to building construction. All fire hydrants shall remain operational during construction.
148. All required fire hydrants shall be readily visible and immediately accessible. A clear space of not less than 3-feet shall be maintained at all times.
149. Prior to construction a temporary address sign shall be posted and clearly visible from the street.
150. The permanent building address shall be provided and either internally or externally lighted during hours of darkness. The address shall be clearly visible from the street fronting the property and comply with California Fire Code Section 505.1 for size and color.
151. Montclair Fire Prevention Bureau approval shall be obtained prior to the storage and/or use of hazardous materials as defined by the California Fire Code.
152. The building shall be provided with an automatic fire sprinkler system in accordance with NFPA 13. Construction plans shall be submitted for review and approval to the City of Montclair prior to installation.
153. Prior to building final, the building shall be provided with a Knox Lock key box located no more than seven-feet above the finished surfaced and near the main entrance door.
154. Prior to the issuance of a Certificate of Occupancy the building shall be provided with an emergency radio communication enhancement system. The emergency radio communication enhancement system shall meet the requirements of CFC § 510 and all applicable subsections. The system shall be installed and inspected by the City of Montclair Building Department before the Certificate of Occupancy is issued. The requirement can be waived by the Fire Marshal if the building is evaluated by an Emergency Radio Communication Specialist license by FCC, who certifies the building meets the emergency communications capability as specified by the California Fire Code § 510. The certification shall be in the form of a written report which outlines the analysis used in determining the building meets the emergency communications without an enhancement system.
155. Double Check Detector Assembly shall be painted Rustoleum Hunter Green, satin acrylic finish, and stock #7944502.

***Police***

156. No consumption of alcoholic beverages on any publicly accessible outdoor areas of the property shall be permitted except in approved outdoor dining areas or other event with the express approval of the City and the State Department of Alcoholic Beverage Control. Private, resident-only accessible areas (e.g., clubhouses, patios, access restricted gated areas, etc.) are exempt.
157. Management shall ensure all special events on the premises comply with all applicable City permits, codes, and ordinances, including but not limited to live entertainment permits, yard-sale permits, and noise control ordinances.
158. There shall be no special promotional events held on the property, unless a written request for such is received and approved by the Director of Community Development and the Executive Director Office of Public Safety/Police Chief or their designee.
159. The premises shall be equipped with lighting of sufficient power to illuminate and make easily discernible the appearance and conduct of all persons on or about the parking areas, open space areas, courtyards, pool area, building entries and stairwells, and other common hallway/building access points.
160. The property owner/property manager shall prepare and submit a security plan for the entire development to be reviewed and approved by the Director of Public Safety. The Security Plan shall incorporate:

- a. Adequate lighting to illuminate parking areas, public access easements, open space locations, pool areas, and at common hallway/building access points so that the appearance and conduct of all persons is easily discernible and monitored; and
  - b. A closed circuit video surveillance (CCVS) system meeting the following requirements:
    - i. A minimum amount of cameras shall be placed in a position to monitor all entrances/exits to the community, public access easements, parking areas, public street, and common areas (e.g., park space, courtyards, pool areas, etc.). The final location and quantity of cameras to be determined in the "Security Plan".
    - ii. Cameras shall be capable of no less a resolution than 1920x1080 pixels, otherwise known as 1080p. All cameras shall have IR or low light capability.
    - iii. The CCVS system shall have ample storage capacity to retain camera footage for a period of no less than 90 days. To avoid unintentional lapses in coverage cameras shall not be motion activated. However, to conserve storage space, cameras may use motion sensors to lower the frames-per-second (FPS) during periods when no motion is detected. When motion is detected, cameras shall record no less than 30 frames per second.
161. Alarm systems are encouraged to complement the CCVS system. Current responsible party information shall be on file with the Police Department for appropriate response and notifications.
162. The property owner/property manager shall ensure all special events on the premises comply with all applicable City permits, codes, and ordinances, including but not limited to live entertainment permits, yard-sale permits, and noise control ordinances.
163. The Montclair Police Department may conduct parking enforcement activity on all public right-of-ways, pursuant to the California Vehicle Code. Enforcement of all off-street areas will be the responsibility of the property owner/property manager, as part of an approved Parking Management Plan.

***CONDITIONS PRIOR TO ISSUANCE OF THE CERTIFICATE OF OCCUPANCY AND/OR BUILDING PERMIT FINALS (Conditions 164 - 169)***

***Planning/Administration***

164. Required parking spaces shall be provided and made available for use pursuant to a Building Permit final and prior to the issuance of a Certificate of Occupancy for any residential building in the project.
165. A Certificate of Occupancy for the last building as identified in the Construction Phasing Plan (Condition No. 23) shall be contingent upon the completion of all aspects of the project including, but not limited to the:
  - a. Completion of all public street improvements; and
  - b. Public Park and trail improvements; and
  - c. On-site improvements and landscaping for each building site.
166. To ensure compliance with the conditions of approval, a final inspection shall be required by the Planning Division upon completion of construction of each building and associated site improvements within the development. The applicant shall contact the City to schedule an appointment for such inspections.

***Building***

167. Prior to the issuance of a Certificate of Occupancy for each building/structure, the applicant shall:

- a. Complete all on-and off-site improvements directly associated to the full use of the building and/or structure under consideration.
- b. Provide a grading certificate, signed and sealed by the Civil Engineer of Record certifying that all grading has been completed according to the approved plans and all buildings and structures are in the called out location as stated on the plans.
- c. Complete Fire Department inspection and obtain final approval. Obtain final approval from all departments and the Monte Vista Water District.

***Water Quality Management Plan (WQMP)***

168. Prior to issuance of a Certificate of Occupancy, the applicant shall:
  - a. Submit to the Engineering Division an electronic copy of the approved WQMP in PDF format.
  - b. Submit to the Engineering Division as-built drawings as it relates to the WQMP.
  - c. Record the WQMP Maintenance Agreement with the County of San Bernardino and provide evidence of said recording to the Engineering Division.
169. Prior to release of the Certificate of Occupancy for the first building of the project, the person or corporation responsible for the preparation of the WQMP shall certify in writing to the NPDES Coordinator that all conditions and requirements of the WQMP have been properly implemented. For projects, developments, or properties intended to be leased or sold, developer/applicant or owner shall also submit evidence to the NPDES Coordinator that lessee or purchaser has been advised in writing of lessee's or purchaser's on-going maintenance responsibilities with respect to the requirements of the WQMP.

***ONGOING CONDITIONS (Conditions Nos. 170-175)***

***General***

170. Comply with all conditions stated or referenced in these "Conditions of Approval" that apply as on-going rules, requirements, or conditions.

***Planning/Administration***

171. Implement all requirements and conditions of, and perform, maintenance activities in conformance with the Regulatory Agreement.
172. Comply with all on-going terms and conditions contained in the Master Solid Waste Removal Plan (SWRP).
173. Pursuant to Section 11.60.240 of the Montclair Municipal Code, all landscaping and irrigation systems shall be maintained in accordance with the approved site and/or landscape plan to ensure water use efficiency.
  - a. Any plant material that does not survive or which was removed or destroyed, shall be replaced upon its demise or removal, with plant material of like type and size as that which was originally approved and installed.
  - b. Plant material shall not be severely pruned such that the natural growth pattern or characteristic form are significantly altered. Trees shall be pruned to ISA (International Society of Arboriculture) standards and only as necessary to promote healthy growth and for aesthetic purposes (i.e., to enhance the natural form of the tree). Improperly or severely pruned trees, including topping as defined by the Water Conservation Ordinance, which results in the removal of the normal canopy and/or disfigurement of the tree shall be replaced with trees of similar size and maturity as that which was removed or, as required by the Community Development Director.

- c. Dead vegetation shall be promptly replaced with healthy, living plants in accordance with standard seasonal planting practices. The property owner shall also be responsible to keep the landscaped areas reasonably free of weeds, trash, and debris.
- d. Modifications to and/or removal of existing landscaping shall require prior approval by the Planning Division.

***Building***

174. In conformance with the Regulatory Agreement, the applicant and/or property owner shall:
- a. Maintain the building's signs, lighting, landscaping, and all improvements in good working order at all times.
  - b. Remove any accumulation of trash, weeds, or debris on the property.
  - c. Remove graffiti on any building or associated improvements, and/or within 48 hours upon notification by the City.

***Water Quality Management Plan (WQMP)***

The owner shall contract with a qualified firm to inspect and maintain any stormwater treatment devices specified by the approved WQMP, following all WQMP recommendations. It shall be the responsibility of the owner to maintain inspection reports and provide inspection reports to the City upon request. In the event any stormwater treatment device fails due to lack of, or insufficient maintenance and/or inspection, or some other unforeseen circumstance, it shall be the responsibility of the owner to correct the deficiency and restore the stormwater treatment device(s) to its original operating condition.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	TAX495
<b>SECTION:</b>	PUBLIC HEARINGS	<b>DEPT.:</b>	ECONOMIC DEV.
<b>ITEM NO.:</b>	B	<b>PREPARER:</b>	M. FUENTES

**SUBJECT:** SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 22-999 ADDING CHAPTER 4.76 TO TITLE 4 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO IMPOSING A CANNABIS BUSINESS LICENSE TAX (SUBJECT TO FINAL APPROVAL BY THE VOTERS AT THE NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION)

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**REASON FOR CONSIDERATION:** The City Council is requested to consider conducting the second reading of Ordinance No. 22-999 imposing a General Business License Tax on Commercial Retail Sales of Cannabis, which is subject to final approval by the voters at the November 8, 2022 General Municipal Election, and setting a public hearing for the second reading and adoption of Ordinance No. 22-999 for Monday, August 15, 2022, at 7:00 p.m.

At the August 1, 2022 City Council Meeting, the City Council approved Resolution No. 22-3374 ordering the submission to the voters of the City of Montclair a measure to consider a general business license tax on commercial retail sale of cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the city attorney to prepare an impartial analysis of the measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the measure. The tax would be imposed on gross receipts of commercial cannabis businesses up to a maximum of seven percent, which was reduced from staff's proposed maximum of ten percent by the City Council at the August 1, 2022 meeting. Ordinance No. 22-999 would only go into effect upon voter approval of the measure ordered by Resolution No. 22-3374.

A copy of proposed Ordinance No. 22-999 is attached for City Council review and consideration.

**BACKGROUND:**

***Ordinance No. 22-999 – Montclair Cannabis Business License Tax***

On November 6, 1996, the voters of the State of California approved Proposition 218 (the "Right to Vote on Taxes Act"), an amendment to the State Constitution requiring that all general taxes which are imposed, extended or increased must first be submitted to the electorate and approved by a majority vote of the qualified electors voting in the election.

Pursuant to Proposition 218 (California Constitution, Article XIII C, section 2(b)), the general rule is that any local election for the approval of an increase to a general tax must be consolidated with a regularly scheduled general election for members of the governing body of a local government.

On August 1, 2022, the City Council approved Resolution No. 22-3374 submitting a measure proposing General Business License Tax on Commercial Retail Sales of Cannabis to the voters at the November 8, 2022 General Municipal Election. If approved by a majority of the City's voters at that election, Ordinance No. 22-999 would amend the municipal code and, should cannabis businesses be later authorized to operate in

the City by the City Council, the proceeds of the proposed general tax on gross receipts of cannabis businesses may be spent on any lawful general City purpose.

Proposed Ordinance No. 22-999 would establish the structure and procedures for the implementation of the "Montclair Cannabis Business License Tax" and other subsequent legal requirements.

Ordinance No. 22-999 contains the following sections:

- Title;
- Purpose;
- Definitions;
- Cannabis Business License Tax;
- Tax payment does not authorize activity;
- Cannabis tax is not a sales tax;
- Returns and remittances;
- Audits;
- Refunds;
- Tax administration
- Appeals;
- Consistency with business license tax; and
- Constitutionality and legality.

If approved by the voters, the tax measure would add Chapter 4.76, Cannabis Business License Tax to Title 4, of the Montclair Municipal Code and would allow for a tax on commercial cannabis businesses to raise revenue for general fund purposes.

This measure would impose a gross receipts tax on the privilege of conducting the following activities within the City's jurisdiction: transporting, dispensing, manufacturing, producing, processing, preparing, storing, testing, providing, selling, delivering, distributing, or testing cannabis or cannabis products by commercial cannabis businesses in the City of Montclair.

The proposed measure seeks voter approval for a maximum tax of seven percent of gross receipts. Once approved, the City Council would have the power to implement a lower tax rate than the maximum rate of seven percent and/or establish differing tax rates for each of different categories of cannabis business activities.

The City Manager would be responsible for adopting administrative policies to promulgate rules, regulations, and procedures to implement and administer the tax to ensure the efficient and timely collection. The City Manager would also be responsible for organizing an independent audit of the cannabis taxes to verify that tax revenues have been properly collected and expended in accordance with will of the voters.

If Ordinance No. 22-999 is approved by the City Council, with subsequent approval by the voters of the City of Montclair at the General Municipal Election to be held on November 8, 2022, the "Montclair Cannabis Business License Tax" would be operative beginning 10 days after certification of the November 8, 2022 General Municipal Election.

**November 8, 2022, Municipal Election Ballot Timeline.**

**Table 1**, below, identifies the San Bernardino County Election deadlines related to submission of a ballot measure appearing on the November 8, 2022, Municipal Election:

**Table 1  
November 8, 2022  
Municipal Election Ballot Measure Timelines**

<b>EVENT</b>	<b>DATE</b>
<b>Assignment of Measure Letters by San Bernardino County Registrar of Voters</b>	Monday, August 15, 2022 11:00 a.m.
<b>Deadline to Withdraw Measure</b>	Wednesday, August 17, 2022 5:00 p.m.
<b>Impartial Analysis Submission Deadline</b>	Monday, August 22, 2022 12:00 p.m.
<b>Argument Submission Deadline</b>	Monday, August 22, 2022 12:00 p.m.
<b>Rebuttal Submission Deadline</b>	Thursday, August 25, 2022 6:00 p.m.
<b>End of 10-day Public Examination Period for Arguments</b>	Thursday, September 1, 2022 12:00 p.m.
<b>End of 10-day Public Examination Period for Rebuttals</b>	Monday, September 5, 2022 5:00 p.m.

**FISCAL IMPACT:** There would be no direct fiscal impact in relation to the City Council’s adoption of Ordinance No. 22-999 other than the normal publication costs associated with the adoption of Ordinances; however, voter approval of proposed Montclair cannabis business license tax would put in place the maximum rates that commercial cannabis businesses could be charged if and when the City Council elects to adopt ordinances pertaining to the legalization of commercial cannabis business in the City of Montclair.

**RECOMMENDATION:** Staff recommends the City Council direct the City Clerk to perform a second reading by number and title only, and adopt Ordinance No. 22-999 adding Chapter 4.76 to Title 4 of the Montclair Municipal Code related to imposing a cannabis business license tax (subject to final approval by the voters at the November 8, 2022 General Municipal Election).

ORDINANCE NO. 22-999

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADDING CHAPTER 4.76 TO TITLE 4 OF THE MONTCLAIR MUNICIPAL CODE RELATED TO IMPOSING A CANNABIS BUSINESS LICENSE TAX (SUBJECT TO FINAL APPROVAL BY THE VOTERS AT THE TUESDAY, NOVEMBER 8, 2022 GENERAL MUNICIPAL ELECTION)**

**WHEREAS**, pursuant to California Elections Code §9222, the City Council has the authority to place local measures on the ballot to be considered at a Municipal Election; and

**WHEREAS**, on August 1, 2022, the City Council adopted Resolution No. 22-3374 ordering the submission to the voters of Montclair a measure to consider a general business license tax on commercial retail sale of cannabis at the General Municipal Election of November 8, 2022 (the "Measure"); and

**WHEREAS**, the City Council has reviewed the form and content of this Ordinance and by its adoption approves this Ordinance as the complete text of the Measure subject to approval by the voters of the City of Montclair.

**NOW, THEREFORE, THE CITY COUNCIL AND THE VOTERS OF THE CITY OF MONTCLAIR HEREBY ORDAIN AS FOLLOWS:**

**SECTION I. Amendment to Code.** Chapter 4.76 is hereby added to Title 4 of the Montclair Municipal Code with the following provisions:

**CANNABIS BUSINESS LICENSE TAX**

**4.76.010. Title.**

This chapter shall be referenced as the "Montclair Cannabis Business License Tax."

**4.76.020. Purpose.**

This chapter is adopted for the following purposes and shall be interpreted to accomplish them:

- A. To impose a tax on the privilege of conducting cannabis business in the city, under the state Medicinal and Adult-Use Cannabis Regulation and Safety Act, California Business and Professions Code section 26000, Proposition 64, approved by the voters in November 2016 and as amended to date ("MAUCRSA"), which legalized and regulates adult use of cannabis in California, and other applicable law as it now exists or may hereafter be adopted;
- B. To impose a general tax to generate revenues which may be used in the discretion of the City Council for any lawful purpose of the City;
- C. To specify the type of tax and rate of tax to be levied and the method of collection; and
- D. To comply with all requirements for imposition of a general tax.

This Chapter is enacted solely to raise revenue, not for regulation. It shall apply to all persons engaged in cannabis business in the City. The tax imposed by this chapter is a general tax under Article XIII C of the California Constitution.

**4.76.030. Definitions.**

For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section unless the context makes apparent another meaning was intended.

- A. "Cannabis" or "marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not, including the seeds of such plants. "Cannabis" also means cannabis as defined by Business and Professions Code section 26001, subdivision (f), the Health and Safety Code section 11018, and by other state law.

- B. "Cannabis accessory" is any device intended to aid in the use of cannabis or cannabis products which does not itself consist in all or part of cannabis or cannabis products and includes, without limitation, "cannabis accessories" as defined in Health and Safety Code section 11018.2 and by other state law.
- C. "Cannabis business" means the activity of any natural or legal person, business, or collective in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (including both wholesale and retail sales) of cannabis, cannabis products, or cannabis accessories, whether or not carried on for gain or profit, whether for medical or adult use, and whether or not such business is licensed by the State. A cannabis business does not include any business the only relationship of which to cannabis or cannabis products is the production or sale of cannabis accessories.
- D. "Cannabis product" means any product containing cannabis or its derivatives, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and products described in Section 11018.1 of the Health and Safety Code.
- E. "City Manager" means the city manager or his or her designee.
- F. "Collector" means the city manager or a person he or she charges to administer this Chapter.
- G. "Commercial cannabis cultivation" means cultivation conducted by, for, or as part of a cannabis business. Commercial cannabis cultivation does not include personal medical cannabis cultivation, or cultivation for personal adult use as authorized by the MAUCRSA, including Health & Safety Code section 11362.1 et seq., for which the individual receives no compensation whatsoever.
- H. "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- I. "Delivery" means the transfer for any form of compensation of cannabis or cannabis products to a customer or caregiver at a location that is not a dispensary.
- J. "Dispensary" means a fixed place at which cannabis, cannabis products, or accessories for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including, without limitation, a dispensary that engages in delivery.
- K. "Distributor" means a person engaged in procuring cannabis and/or cannabis products for sale to a dispensary or to others engaged in retail sales of cannabis and/or cannabis products. "Distribution" means engaging in that conduct and a "distribution facility" is any real property, whether or not improved, used in such conduct.
- L. "Gross receipts," except as otherwise specifically provided in this chapter or by regulations authorized by this Chapter, has the meaning stated in section 4.02.010 of this Code.
- M. "Manufacturer" means a person who engages in the production, preparation, propagation, or compounding of cannabis or cannabis products either directly or indirectly or by extraction methods, or by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- N. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association; city, county, state, or district; and includes any trustee, receiver, assignee, or other similar representative thereof.

**4.76.040. Cannabis Business License Tax.**

- A. There is hereby imposed on every person who engages in cannabis business in the City an annual cannabis business license tax in the amounts stated in this Section 4.76.040 or such lesser amounts as the City Council may from time to time establish.
- B. The City Council may, by resolution, implement a tax rate lower than the maximum rate established in subsection (C) of this section for all persons

engaged in cannabis business, or establish differing tax rates for different categories of cannabis business. The City Council may, by resolution, decrease or increase such tax rates without further voter approval provided the tax rate is not above the maximum tax rate established in subsection (C) of this section.

- C. The maximum rate of the cannabis tax shall be calculated as follows:
1. For every person who engages in commercial cannabis cultivation shall be subject to the maximum tax rate not to exceed seven percent (7%) of gross receipts.
  2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed seven percent (7%) of gross receipts.
  3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) shall be subject to the maximum tax rate not to exceed seven percent (7%) of gross receipts.
  4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed seven percent (7%) of gross receipts.
  5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section 4.76.040 (C) (1), (2), (3) or (4), the maximum tax rate shall not exceed seven percent (7%) of gross receipts.
- D. The City Council shall set the initial cannabis tax rates at zero dollars until such time as the City Attorney determines in writing that commercial cannabis activities in the City of Montclair are lawful either because the City Council has permitted commercial cannabis activities to occur in the City of Montclair or state or federal law has limited the City of Montclair's authority to forbid commercial cannabis activities from occurring.

**4.76.050. Payment obligations.**

Each person subject to a tax under this chapter shall pay that tax regardless of any rebate, exemption, incentive, or other reduction elsewhere in this code, except as required by state or federal law. Failure to pay such a tax shall be subject to penalties, fines and interest charges established under this Chapter and the City may resort to any or all other remedies available at law or in equity to enforce this chapter. No provision of this Chapter shall be interpreted to reduce a tax rate established under this chapter or otherwise reduce the taxes paid hereunder unless the provision specifically requires that reduction.

**4.76.060. Tax payment does not authorize activity.**

The payment of a tax imposed under this Chapter does not authorize the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this chapter authorizes or implies the lawfulness of any activity connected with the distribution or possession of cannabis unless otherwise authorized and allowed in strict and full conformance with this code. Nothing in this Chapter is intended to authorize commercial cannabis activity.

**4.76.070. Cannabis tax is not a sales tax.**

The tax imposed by this Chapter is upon the privilege of doing business in the City. It is not a sales or use tax.

**4.76.080 – Returns and remittances.**

The tax imposed by this chapter shall be due and payable as follows:

- A. Each person owing tax under this Chapter shall provide a tax return to the city manager on or before the last business day of each month stating the tax owed for the preceding month and the basis of its calculation. The taxpayer shall remit the tax owed to the City Manager when the return is due.

- B. The City Manager may establish a form for tax returns submitted under this section and, if so, use of that form shall be mandatory.
- C. Tax returns and payments for all outstanding taxes, penalties and interest owed the city are immediately due upon cessation of business for any reason.
- D. Whenever the City Manager receives a payment, statement, report, request or other communication after the time this section prescribes for its receipt in an envelope postmarked by that time, the City Manager shall regard such payment, statement, report, request, or other communication as timely. If the due date falls on a day when city offices are not open for business, the due date shall be the last day before that date when city offices are open for business.
- E. Unless otherwise provided by this Chapter, the tax imposed by this chapter is delinquent if not paid by the due date specified in subsection (A) of this section.
- F. The City Manager need not send a bill or delinquency or other notice to any person subject to a tax imposed by this chapter and failure to send such bill or notice shall not affect the validity of any tax, interest or penalty due under this chapter.

**4.76.090 – Audits.**

The City Manager shall arrange for an annual independent audit of the receipts and expenditures of the taxes imposed by this chapter. He or she shall share that audit report with the City Council and make it available for public inspection.

**4.76.100. Refunds.**

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in this section.
- B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a cannabis business.
- C. Any person entitled to a refund of sums paid under this Chapter may ask the City to apply it as a credit against future obligations under this Chapter.
- D. If a tax, penalty, or interest imposed under this Chapter has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the City, such amount shall be refunded to the person who paid it upon a written claim for refund filed with the City Manager within a year of the payment sought to be refunded.
- E. The collector may examine and audit all the books and business records of a refund claimant to determine entitlement to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of the claimant's books and business records.
- F. A sum erroneously paid under this chapter due to an error of the City shall be refunded to the claimant in full upon a claim filed within one year of the payment sought to be refunded. If an error is attributable to the claimant, the City may retain an amount established by resolution of the City Council to recover the City's cost to process the claim and refund the balance.

**4.76.110. Tax administration.**

- A. It shall be the duty of the City Manager to collect the taxes, penalties, and interests, and perform the duties this chapter requires.
- B. The City Manager may from time to time promulgate such administrative rules and procedures consistent with the purpose, intent, and terms of this Chapter as he or she deems necessary to implement or clarify it or to aid in its enforcement. He or she shall give notice of those regulations as required for ordinances of the City Council and such regulations shall take effect upon such notice unless a particular regulation provides otherwise.
- C. The City Manager may take such administrative actions as needed to administer the tax, including but not limited to:
  - 1. Provide information about this Chapter to any taxpayer;

2. Receive and record all taxes remitted to the City under this Chapter;
3. Maintain records of taxpayer reports and taxes collected under this Chapter;
4. Assess penalties, fines and interest charges to taxpayers under this Chapter;
5. Determine amounts owed and enforce collection under this Chapter; and
6. Take such other reasonable steps as he or she deems appropriate to enforce this Chapter.

D. The City council may establish by ordinance or resolution penalties, fines and interest charges related to this chapter.

**4.76.120. Appeals.**

Any person aggrieved by any decision of the City under this Chapter may appeal to the City Council pursuant to the procedures described in Section 1.08.030 of this Code. The City Council may, but need not, appoint a hearing officer to decide appeals or to provide a recommended decision for the City Council's review. Judicial review of the City's final action on any such appeal shall be available under California Code of Civil Procedure section 1094.5.

**4.76.130. Consistency with business license tax.**

The City Council intends this Chapter to be enforced consistently with the balance of Title 4 of this Code and any rule or regulation promulgated under that title except as this chapter expressly requires to the contrary.

**4.76.140 – Constitutionality and legality.**

- A. The tax imposed under this Chapter is intended to be applied consistently with the United States and California Constitutions and applicable law. The tax shall not be applied to cause an undue burden upon interstate or inter-city commerce, a violation of the equal protection or due process clauses of those Constitutions, to constitute a special tax, or to violate any other provision of applicable law.
- B. Under California Constitution, Article XIII B, the appropriation limit for the City is hereby increased to the maximum extent over the maximum period of time allowed under law by the amount of the revenues generated by the tax imposed by this chapter.

**SECTION II. Amendment.** To the extent Article XIII C of the California Constitution allows, the City Council may amend this Ordinance without a vote of the people, except that voter approval shall be required for any amendment that would increase, within the meaning of Government Code section 53750, subdivision (h), the tax rate beyond the maximum rates this Ordinance authorizes.

**SECTION III. CEQA.** This Ordinance is exempt from the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 *et seq.*, because it can be seen with certainty that there is no possibility that its enactment would have a significant effect on the environment (Pub. Resources Code 21065, CEQA Guidelines 15378(b)(4), 15061(b)(3) and because the Ordinance involves the approval of government revenues to fund existing services (Pub. Resources Code 21080, subd. (b)(8); CEQA Guidelines 15273(a)(4). It does not make any commercial activity lawful nor commit the City to fund any particular activity.

**SECTION IV. Severability.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance is held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The People of the City of Montclair declare that they would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion of it, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions might be declared invalid or unconstitutional.

**SECTION V. Effective Date.** This Ordinance shall take effect, under Elections Code sections 9217 and 9122, 10 days after certification of its approval by a majority of those voting on the measure at the November 8, 2022 general municipal election.



**SECTION VI. Certification.** Upon approval by the voters, the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause it to be published according to law.

**SECTION VII. Execution.** The Mayor shall sign and the City Clerk shall attest to the adoption of this ordinance upon certification by the City Council of the results of the election approving this ordinance.

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

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 22-999 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2022, and finally passed not less than five (5) days thereafter at a regular meeting on the XX day of XX, 2022, 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>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN520
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	1	<b>PREPARER:</b>	J. KULBECK
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council is requested to consider receiving and filing the City of Montclair Treasurer's Report for the month ending July 31, 2022.

**BACKGROUND:** Included in the City Council's agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2022.

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

**RECOMMENDATION:** Staff recommends the City Council receive and file the Treasurer's Report for the month ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN540
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	FINANCE
<b>ITEM NO.:</b>	2	<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 August 15, 2022, and the Payroll Documentations dated July 3, 2022, and July 17, 2022, and recommends their approval.

**FISCAL IMPACT:** The Warrant Register dated August 15, 2022, totals \$2,743,764.37.

The Payroll Documentation dated July 3, 2022 totals \$712,817.94 gross, with \$498,513.69 net being the total cash disbursement.

The Payroll Documentation dated July 17, 2022 totals \$657,648.47 gross, with \$588net 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>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN510
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors (Successor Agency Board) is requested to consider receiving and filing the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Included in the Successor Agency Board's agenda packet is a copy of the Successor to the Redevelopment Agency Treasurer's Report for the period ending July 31, 2022.

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

**RECOMMENDATION:** Staff recommends the Successor Agency Board receive and file the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN530
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	SA
<b>ITEM NO.:</b>	4	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The City Council acting as Successor to the Redevelopment Agency Board of Directors is requested to consider receiving and filing the Successor to the Redevelopment Agency Warrant Register for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 07.01.22-07.31.22 in the amounts of \$6,121.49 for the Combined Operating Fund and \$0.00 for the Redevelopment Obligation Retirement Funds, and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the City Council as Successor to the Redevelopment Agency Board of Directors approve the Successor to the Redevelopment Agency Warrant Register for the period ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	5	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to receive and file the Montclair Housing Corporation Treasurer's Report for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Corporation Board agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2022.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Corporation Board of Directors receive and file the Treasurer's Report for the month ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHC
<b>ITEM NO.:</b>	6	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Corporation Board of Directors is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 07.01.22-07.31.22 in the amount of \$32,000.79 for the Montclair Housing Corporation and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the Montclair Housing Corporation Board of Directors approve the Warrant Register for the period ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN525
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	7	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to receive and file the Montclair Housing Authority Treasurer's Report for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Included in the Montclair Housing Authority Commission's agenda packet is a copy of the Treasurer's Report for the period ending July 31, 2022.

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

**RECOMMENDATION:** Staff recommends the Montclair Housing Authority Commission receive and file the Treasurer's Report for the month ending July 31, 2022.





# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	FIN545
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	MHA
<b>ITEM NO.:</b>	8	<b>PREPARER:</b>	C. RAMIREZ
<b>SUBJECT:</b>	CONSIDER APPROVAL OF WARRANT REGISTER		

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**REASON FOR CONSIDERATION:** The Montclair Housing Authority Commission is requested to consider receiving and filing the Warrant Register for the month ending July 31, 2022, pursuant to state law.

**BACKGROUND:** Vice Chair Ruh has examined the Warrant Register dated 07.01.22-07.31.22 in the amount of \$0.00 for the Montclair Housing Authority and finds it to be in order.

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

**RECOMMENDATION:** Vice Chair Ruh recommends the Montclair Housing Authority Commission approve the Warrant Register for the period ending July 31, 2022.



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	CCK280
<b>SECTION:</b>	CONSENT - ADMIN. REPORTS	<b>DEPT.:</b>	CITY MGR./CITY CLERK
<b>ITEM NO.:</b>	9	<b>PREPARER:</b>	A. MYRICK
<b>SUBJECT:</b>	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

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**REASON FOR CONSIDERATION:** City Council approval is required for the destruction of obsolete records in accordance with the Records Retention Schedule on a periodic basis. The City Council is requested to authorize the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

The subject records requested for destruction are listed on the attached *City of Montclair Destruction of Public Records Forms*. The current lists consist of records from the Finance and Human Services Department.

**BACKGROUND:** On November 19, 2012, the City Council adopted Resolution No. 12-2973 establishing the Montclair Records Retention Schedule as the City of Montclair's Official Records Management Program, and providing ongoing authority for the destruction of obsolete public records in accordance with the Records Retention Schedule by the City Clerk, with review and consent by the City Attorney.

In 2016, the City entered into Agreement No. 16-81 with Corodata for off-site records storage and other records management services.

**FISCAL IMPACT:** There would be no fiscal impact directly related to authorizing the destruction of the subject Human Services Department's records, as the Department maintains the subject records within staff offices, and will be using staff time and the City's monthly on-site shred service to destroy the records once approved.

The Finance Department's records are stored at Corodata, the City's contracted off-site records storage facility. The current rate for Corodata to destroy records stored at its facility is \$7.20 per box, plus a supplemental energy charge on the total invoice of 5 percent. There are 33 boxes of Personnel and Finance records stored at Corodata due for destruction. The total cost to have Corodata destroy the records would be \$249.48, and the monthly storage rate would be reduced by \$9.70 (\$0.28 per box per month, plus the energy fee), for a total annual cost reduction of \$116.42 for one year, making the total net impact to the General Fund for the year \$133.06. The cost for this action would be charged to the City Clerk Contract Services budget (Account No. 1001-4314-52450-400-00000), which has sufficient funds to cover the charge. Upon destruction, the City would receive a Certificate of Destruction for our records from Corodata, which lists the boxes that were destroyed. The web application maintains the information that was associated with the destroyed boxes in its database, including staff-provided descriptions of what the boxes' contents were.

It should be noted that the cost for removal of the boxes from Corodata's inventory permanently to destroy the contents of the boxes ourselves would incur a much higher total cost, which would include fees of \$2.15 for retrieval, \$7.45 for removal, and \$2.65 for delivery for each box, and an \$22.40 charge for a one-way delivery trip (although it

may take multiple trips), totaling an estimated \$447.98, assuming only one trip is needed and no additional fees apply.

**RECOMMENDATION:** Staff recommends the City Council authorize the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.



# CITY OF MONTCLAIR

## DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.

The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

Department: Human Services

Page 1 of # 1

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Evaluations/ Surveys	Por La Vida Class surveys	1/2009- 8/2015	CU+2
Activity/Project Files	Por La Vida sign-in sheets	1/2009- 8/2015	CU+2
Liability Forms	Por La Vida Travel Agreement/release from liability form	2/2008- 10/2008	CU+2
Evaluations/ Surveys	Por La Vida Class surveys	10/2005- 9/2006	CU+2
Liability Forms	Por La Vida Travel Agreement/release from liability form	2/2002- 8/2005	CU+2

Approval for destruction of listed records:

Dept. Records Manager: Alyssa Colunga  
 Department Head: M. Richter  
 City Clerk: Michaela... [Signature]  
 City Attorney: \_\_\_\_\_

Date: 8/4/2022  
 Date: AUG 04 2022  
 Date: 8/4/22  
 Date: \_\_\_\_\_



# CITY OF MONTCLAIR

## DESTRUCTION OF PUBLIC RECORDS FORM

Please refer to the City of Montclair Records Retention Schedule for record retention guidelines for each department.

The retention period has expired for the records listed below pursuant to the City of Montclair's Records Retention Schedule.

Department: Finance

Page 1 of 1

<i>Record type &amp; Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Bank Deposits/ Receipts AU+4	FIN 1527-FIN 1538 Cash Receipts	FY16-17	12 boxes at Corodata
Payroll/Timesheet AU+6	FIN 1268 Check Prooflist 7/6/8-12/21/8	FY07-08	1 box at Corodata
Payroll/Timesheet AU+6	FIN 1351 Payroll (FLSA FY 97/98-FY11/12)	FY97-98 - FY11-12	1 box at Corodata
Checks AU+5	FIN 1353, FIN 1541, FIN 1590 JD Property Summaries/Statements	FY12-13, FY 16-17, 7-8/15	3 boxes at Corodata
Payroll/Timesheet AU+6	FIN 1384, 1386 Payroll Check Proof List/DS Time Sheets	7/2011 - 6/2012	2 boxes at Corodata
Warrant Checks AU+5	FIN 1553 Warrant M-O.F. Wolfinbarger	FY16-17	1 box at Corodata
Cashier's Reports AU+4	FIN 1592 Credit Card Receipts and Statements	FY16-17	1 box at Corodata
Journal Entries AU+4	Journal Entries	FY14-15 - FY15-16	1 box at Corodata
Billing Records AU+2	FIN 1627, FIN 1702, FIN 1703 Sewer and Trash Receipts	10/2018- 1/2020	3 boxes at Corodata
Checks AU+5	FIN1649 MHA/MHC/RDA Treasurer Report Imprest	FY13-14	1 box at Corodata
BL App/Reports CL+2	FIN 1660-1662, FIN1673 Business License In-Town Closed Accts	FY16-17 to FY18-19	3 boxes at Corodata

Approval for destruction of listed records:

Dept. Records Manager: Cathy Ganes Date: 8/9/2022  
 Department Head: Janet Kulbeck Date: 8/9/2022  
 City Clerk: Audrea Lyrik Date: 8/11/2022  
 City Attorney: \_\_\_\_\_ Date: \_\_\_\_\_



# CITY COUNCIL AGENDA REPORT

**DATE:** AUGUST 15, 2022 **FILE I.D.:** VEH125/450  
**SECTION:** CONSENT - ADMIN. REPORTS **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 10 **PREPARER:** M. PARADIS  
**SUBJECT:** CONSIDER AUTHORIZING THE PURCHASE OF A VACTOR CNG 2110 PLUS SEWER CLEANER TRUCK FROM HAAKER EQUIPMENT CO.

CONSIDER DECLARING A 2004 INTERNATIONAL COMBO SEWER TRUCK (UNIT 314) AS SURPLUS AND AVAILABLE FOR AUCTION

**REASON FOR CONSIDERATION:** The City Council is requested to consider authorizing the purchase of a Vactor CNG 2110 Plus Sewer Cleaner from Haaker Equipment Co. and declaring Unit 314 as surplus and available for auction. Any purchase over \$15,000 requires City Council approval.

**BACKGROUND:** The City owns a 2004 International combo sewer truck (Unit 314), which is no longer compliant with emissions requirements by the South Coast Air Quality Management District. Therefore, it cannot be driven on any California roadway after January 1, 2023.

In the Public Works Department’s Fiscal Year 2022–23 Budget, the City Council approved funding for purchasing a new combination sewer and storm drain cleaning truck. The vehicle will replace Unit 314 and be used to clean storm drain facilities and vacuum out raw sewage in the event of a sanitary sewer overflow. It could also be used for potholing around underground utilities and other maintenance activities.

Staff received three quotes for comparable vehicles, as shown below:

<i>Company</i>	<i>Vehicle</i>	<i>Quote</i>
Nixon-Egli Equipment Co.	Sewer Equipment of America 900-ECO-9	\$597,892.24
MME	Vac-Con Model V311LHAEN-P/1000	\$571,706.97
Haaker Equipment Co.	Vactor CNG 2110 Plus Sewer Cleaner	\$564,560.05

Staff determined that the quote from Haaker Equipment Co. is the best value for the City.

**FISCAL IMPACT:** Sewer Operating Funds in the amount of \$568,222 were included in the Fiscal Year 2022–23 Budget for the purchase of the new combination sewer and storm drain cleaning truck. The proceeds from the sale of surplus Unit 314 will be returned to the Sewer Equipment Replacement Fund.

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

1. Authorize the purchase of a Vactor CNG 2110 Plus Sewer Cleaner from Haaker Equipment Company
2. Declare a 2004 International Combo Sewer Truck (Unit 314) as surplus and available for auction.

# HAAKER

## EQUIPMENT COMPANY

2070 North White Avenue, La Verne, California  
91750 (909) 598-2706 ~ FAX (909) 598-1427 ~  
haaker.com



**QUOTE**  
August 2, 2022

**TO:** CITY OF MONTCLAIR  
5111 Benito Street.  
Montclair CA 91763

**ATTN:** Mr. Alex Cardona  
909-625-9467  
Email: [acardona@cityofmontclair.org](mailto:acardona@cityofmontclair.org)

In accordance with your request, we are pleased to submit the following proposal for your consideration and approval based on the [Sourcewell Cooperative Purchasing Agreement - Contract #101221-VTR](#).

### **One (1) NEW VACTOR CNG 2110 PLUS SEWER CLEANER**

10-Cubic Yard Capacity with 16" Positive Displacement Blower, 1000 Gallons of Water, Mounted on a 2023 Freightliner 4x2, 370 HP Chassis with Allison 3000RDS Automatic Transmission. Equipped with all Standard and Optional Equipment listed:

#### **Standard Equipment:**

- 48" x 22" x 24" Curb Side Aluminum Toolbox
- Aluminum Fenders
- Mud Flaps
- Electric/Hydraulic Four Way Boom
- Color Coded Sealed Electrical System
- Remote Pendant Control w/35' Cord
- Intuitouch Electronic Package
- Double Acting Dump Hoist Cylinder
- Handgun Assembly w/35' x 1/2" Hose w/Quick Disconnects
- 3" Y-Strainer at Water Pump Inlet
- Ex-Ten Steel Cylindrical Debris Tank
- Flexible Hose Guide
- 30 Deg. Sand Nozzle w/Carbide Inserts
- 30 Deg. Sanitary Nozzle w/Carbide Inserts
- 15 Deg. Penetrator Nozzle w/Carbide Inserts
- Nozzle Storage Rack
- Vacuum Tube Storage: Rear Door (2) Pipe
- 1" Nozzle
- 10' Leader Hose
- Flat Rear Door w/Hydraulic Locks and Door Power-up/Down, Open/Close Feature
- Dual 10" Stainless Steel Float Shut Off System/Rear Mounted
- Debris Body Vacuum Relief System
- Debris Deflector Plate
- 48" Dump Height
- Water Sight Gauge PS
- Liquid Float Level Indicator
- Boom Transport Post Storage
- 3" Y-Strainer @ Water Pump w/3" Drain Valve
- Performance Package: (Hyd Variable Flow, Dual PTO's, Dual Hyd. Pumps)
- 1" Water Relief Valve for Vactor Water Pump
- Stainless Steel Microstrainer
- Blower Air Shift Controls
- Hydraulic Cooling Package
- Midship Handgun Coupling
- Side Mounted Water Pump
- Hose Wind Guide (Dual Roller)
- Hose Footage Counter - Mechanical
- Hose Reel Manual Hyd. Extend/Retract
- Hose Reel Chain Cover (Full)
- Tachometer/Chassis Engine W/Hourmeter
- Circuit Breakers

- LED Lights, Clearance, Back-Up, Stop, Tail & Turn
- Tow Hooks, Front and Rear
- Electronic Back-Up Alarm
- Hydraulic Tank Shutoff Valves
- 8" Vacuum Pipe Package
- Emergency Flare Kit
- Fire Extinguisher 5 Lbs.
- Low Water Alarm with Water Pump Flow Indicator
- Front Joystick Boom Control

- Rodder System Accumulator- Jack Hammer on/off control w/ manual valve
- Digital Hose Footage Counter
- Water Pump Hour Meter
- PTO Hour Meter
- Camera System, Rear Only
- Hydraulic Oil Temp Alarm
- Digital Water Pressure Gauge

**Optional Equipment:**

- 48" x 22" x 24" Curb Side Aluminum Toolbox with Lighting
- Roots 824-16" Hg. Blower
- 180 Degree Rotation, 10 Ft. Hydraulic Telescoping Boom, Front Loading 8" Suction Hose
- 80 GPM Variable Flow Water System
- 2500 PSI Water Pressure
- Hydraulic Cooling Package
- 1" x 600' Piranha Sewer Hose, 2500 PSI
- Debris Body Washout
- 6" Butterfly Valve, Rear Door, 3:00 Position
- Full Rear Door Swinging Screen
- Folding Pipe Rack, Curbside, 8" Pipe
- Folding Pipe Rack, Street side, 8" Pipe
- Rear Door Splash Shield
- Lube Manifold
- Plastic Lube Chart
- Final Filter and Silencer Ball Valve Drains
- Hot Shift Blower Drive (automatic transmission)
- Handgun Couplers, Front and Rear
- Hose Wind Guide (Dual Roller), Auto, Non-Indexing
- Rodder Hose Pinch Roller
- High Pressure Hose Reel
- Front Hose Reel Tool Storage

- Rodder Pump Drain Valves
- Wireless, Waterproof, Rechargeable, Handheld, LED Spot Light w/12V Charger
- LED Mid-Ship Turn Signals
- Worklights (2), LED, Boom
- Worklights (2), LED, Rear Door
- Worklight, LED, Operators Station
- Worklight, LED, Hose Reel Manhole
- Worklight, LED, Curb Side
- Worklight, LED, Street Side
- Toolbox, Front Bumper Mounted, 16 x 12 x 18 w/ (2) LED Side Markers
- Toolbox, Driver Side Subframe, 18w x 24h x 24d, with Lighting
- (4) Long Handle Tool Storage Locations behind Cab
- Safety Cone Storage Rack - Post Style
- Additional Safety Cone Storage Rack - Post Style
- Water Cooler Storage Rack
- Blower High Temperature Safety Shutdown
- Vactor Standard Manual and USB Version
- Whelen LED Light Package – Included LED Light Bar, Strobes, Traffic Advisor

Sourcewell Unit Price: .....	\$ 528,207.00
Sourcewell Discount: .....	(\$ 10,262.00)
Subtotal: .....	\$ 517,945.00
Sales Tax (9.0 %) .....	\$ 46,615.05
<b><u>TOTAL PRICE F.O.B. MONTCLAIR, CA.:</u></b> .....	<b><u>\$ 564,560.05</u></b>

THE PROPERTY HEREIN IS GUARANTEED BY MANUFACTURER'S WARRANTY ONLY AND SELLER MAKES NO WARRANTY EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR OTHERWISE, OR OF FITNESS FOR ANY PARTICULAR PURPOSE, THAT EXTENDS BEYOND THE ABOVE DESCRIPTION OF THE EQUIPMENT.

NOTE: Price is good until 15 Days. Cost increases due to the addition of Government mandated safety or environmental devices incurred after the date of this proposal, will be charged to you at our cost. Proof of such costs, if any, will be documented.

TAXES: SALES TAX applicable at time of delivery will be shown on our invoice. FEDERAL EXCISE TAXES, if applicable, will require payment unless a properly executed Exemption Certificate is submitted.

DELIVERY: 240-300 Days

TERMS: Net 30

We appreciate the opportunity to present this proposal and look forward to being of further and continued service.

HAAKER EQUIPMENT COMPANY

ACCEPTED BY: \_\_\_\_\_

BY: George Lopez  
 GEORGE LOPEZ  
 Sales Representative

DATE: \_\_\_\_\_





# CITY COUNCIL AGENDA REPORT

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**DATE:** AUGUST 15, 2022                      **FILE I.D.:** STA815  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** PUBLIC WORKS  
**ITEM NO.:** 1    **PREPARER:** R. HOERNING  
**SUBJECT:** CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM TO INCLUDE THE HOLT BOULEVARD MEDIAN AND STREET REHABILITATION PROJECT

CONSIDER APPROVAL OF AGREEMENT NO. 22-84 WITH HR GREEN PACIFIC FOR THE PREPARATION OF PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OF MEDIAN AND STREET REHABILITATION IMPROVEMENTS ON HOLT BOULEVARD FROM RAMONA AVENUE TO BENSON AVENUE, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER APPROVAL OF AGREEMENT NO. 22-85 WITH AGA ENGINEERS, INC. FOR THE PREPARATION OF PLANS AND SPECIFICATIONS FOR THE CONSTRUCTION OF TRAFFIC SIGNAL UPGRADES AND TRAFFIC SIGNAL INTERCONNECT AND BROADBAND FIBER OPTIC IMPROVEMENTS, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$503,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS FOR COSTS RELATED TO AGREEMENT NOS. 22-84 AND 22-85

CONSIDER AUTHORIZING A \$45,829.25 DESIGN SERVICES CONTINGENCY FOR THE PROJECT

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**REASON FOR CONSIDERATION:** The City Council is requested to consider taking actions related to the design of street improvements and traffic signal upgrades and traffic signal interconnect, and broadband fiber optic improvements for the Holt Boulevard Median and Street Rehabilitation Project from Ramona Avenue to Benson Avenue. Amendments to the Capital Improvement Program, agreements for professional services with the City, and appropriations of unbudgeted funds require City Council approval.

A copy of proposed Agreement No. 22-84 with HR Green Pacific and Agreement No. 22-85 with AGA Engineers, Inc. are attached for City Council’s review and consideration.

**BACKGROUND:** On December 2, 2019, the City Council approved the City of Montclair Capital Improvement Program for Fiscal Years 2019-20 through 2023-24 to assure that long-range capital project objectives will receive proper consideration.

On October 18, 2021, and November 10, 2021, the City Council held workshops to discuss the 2021 Lease Revenue Bonds (LRB) Infrastructure projects. The workshops outlined several street improvement projects and other infrastructure projects, including the Holt Boulevard Median and Street Rehabilitation Project; and the Citywide Broadband Infrastructure initiative program.

The City’s proposed General Plan incorporates a transition from a traditional automobile-prioritized transportation system to the concept of *Complete Streets*, where streets are designed and operated for safe access for all. The plan will create a balance for all users of all age groups and all abilities, including pedestrians, bicyclists, motorists, and public transportation users.

The General Plan Update underway identifies adding a five-foot curb-adjacent landscaped parkway to separate the existing two travel lanes along Holt Boulevard to accommodate a bicycle lane. Also, in late 2020, the City completed the Montclair Active Transportation Plan, which identifies the incorporation of a Class II - Buffered Bicycle Lane or Class IV - Separated Bicycle Lane from Mills Avenue to Benson Avenue.

City staff believes an alternative to the curb-adjacent landscape parkway proposed in the General Plan Update is to implement a buffered bike lane to protect both bicyclists and pedestrians from motor vehicles. To accomplish these street safety and beautification improvements on-street parking will be curtailed along a majority of the roadway. Furthermore, this alternative can be implemented in phases through a short (quick build) "striping" and long-term (ultimate) "hard and soft-scape" corridor development approach.

This approach will achieve the goals and objectives of the two planning documents cost-effectively. The consultant will be responsible for preparing the necessary plans to address the short- and long-term development plans.

The City solicited proposals via Planet Bids to five prequalified engineering firms for the Holt Boulevard Median and Street Rehabilitation Project. The City received two proposals from the firms Kimley-Horn and Associates, Inc., and HR Green Pacific.

A panel of three staff members from the Public Works Department reviewed all proposals based on the criteria of qualifications, experience with similar projects, completeness, and clarity of proposal. The evaluating panel selected HR Green Pacific (HR Green) as the successful applicant. HR Green has completed similar design projects for the cities of Claremont and Pomona. HR Green is currently providing the same services for the City of Pomona's Holt Boulevard corridor, allowing for good coordination and an understanding of the design challenges that need to be addressed. Staff believes HR Green's project team's experience is well suited to this project, and their fee is reasonable.

AGA Engineers (AGA) is currently under contract with the City (Agreement No. 20-63) as the on-call engineering firm responsible for reviewing traffic signal improvement projects and maintaining the traffic signal coordination of signalized intersections throughout the City. AGA designed the signal interconnect and fiber optic for Central Avenue (Phase I) Improvements. They are contracted to complete similar work for Central Avenue (Phase II) and Arrow Highway projects. AGA has the best understanding of Montclair's traffic signal needs and as such were solicited to submit a fee proposal for the engineering design of the Holt Boulevard traffic signal and interconnect fiber optic improvements. These improvements also support the City's Broadband initiatives.

Staff recommends AGA Engineers be retained to prepare traffic engineering plans and specifications for the traffic signal upgrades at five intersections and the traffic signal interconnect and broadband fiber optic infrastructure on Holt Boulevard from Ramona Avenue to Benson Avenue. AGA previously completed the segment of Holt Boulevard from Mills to Ramona Avenue with the street rehabilitation of this section of Holt Boulevard.

**FISCAL IMPACT:** The cost associated with Agreement No. 22-84 with HR Green is \$304,430.75. The cost associated with Agreement 22-85 with AGA Engineering is \$152,740. Staff is requesting an additional \$45,829.25 appropriation as a contingency if additional work is required beyond the scope of services for a total request of \$503,000. Funds for this contract would be provided by 2021 Lease Revenue Bond Proceeds.

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

1. Amend the 2019-2024 Capital Improvement Program to include the Holt Boulevard Median and Street Rehabilitation Project;
2. Approve Agreement No. 22-84 with HR Green Pacific for the preparation of plans and specifications for the construction of median and street rehabilitation improvements on Holt Boulevard from Ramona Avenue to Benson Avenue, subject to any revisions necessary by the City Attorney;
3. Approve Agreement No. 22-85 with AGA Engineers, Inc. for the preparation of plans and specifications for the construction of traffic signal upgrades and traffic signal interconnect and broadband fiber optic improvements, subject to any revisions deemed necessary by the City Attorney;
4. Authorize a \$503,000 appropriation from 2021 Lease Revenue Bond proceeds for costs related to Agreement Nos. 22-84 and 22-85; and
5. Authorize a \$45,829.25 design services contingency for the Project.

# Infrastructure Fund Capital Project Funding Information

Project Name: Holt Boulevard Median and Street Rehabilitation Project  
 Project Details: Median Landscape/Hardscape and Street Rehabilitation, Buffered Bicycle Lane & Traffic Signal (TS) Upgrades and Fiber Optic TS Interconnect /Citywide Broadband Initiative support

Preparation Date: August 9, 2022 Department: Public Works  
 Project No. (Assigned by Finance): \_\_\_\_\_ Contact/Ext.: Rosemary Hoerning

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design					503,000.00	503,000.00	2021 Lease Revenue Bonds
R/W Acquisition							
Construction							
<b>Total</b>	0.00	0.00	0.00	0.00	503,000.00	503,000.00	2021 Lease Revenue Bonds

**Approvals:** \_\_\_\_\_ By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department: \_\_\_\_\_  
 Finance By: \_\_\_\_\_ Date: \_\_\_\_\_  
 City Council Date: \_\_\_\_\_  
 Revision Number: \_\_\_\_\_

**Total Project Cost:** 503,000.00

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

HOLT BOULEVARD STREET REHABILITATION PROJECT

THIS AGREEMENT is made and effective as of on August 15, 2022, between the City of Montclair, a municipal corporation ("City") and HR Green Pacific, 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 August 16, 2022 and shall remain and continue in effect for a period of twenty months until tasks described herein are completed, but in no event later than June 2024 unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

Consultant shall perform the tasks described and set forth in Exhibit B, 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 B.

3. PERFORMANCE

Consultant shall at all times competently perform all tasks described herein in a manner consistent with professional standard of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality.

4. CITY MANAGEMENT

City's City Manager shall represent City in all matters pertaining to the administration of this Agreement and 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 5 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 **three hundred four thousand four hundred thirty dollars and seventy five cents (\$304,430.75)** for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement. Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Said invoices shall detail all costs, rates and hours for individual tasks. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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(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 in compliance with this Agreement. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

**7. DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall compensate Consultant for work performed in a manner consistent with professional standard of care. City can terminate this Agreement after providing Consultant seven (7) days prior notice if the Consultant is in default of this Agreement. 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 to the extent the default is 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, and payment to Consultant for all monies due under this Agreement, all original documents, including computer files, prepared by Consultant during its performance of services under this Agreement ("Documents") shall become the sole property of the City. Documents are not intended or represented to be suitable for reuse by City or others on any other project. Any reuse or modification of the work product without the prior written consent of Consultant will be at the sole risk of the City. The City agrees to indemnify and hold harmless

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from any and all liabilities, damages, and costs arising out of or related to the misuse or unauthorized reuse of Documents. 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. In accordance with California Civil Code 2782.8 which is fully incorporated herein. Consultant shall indemnify, and hold harmless the City, its present officers, directors and employees, (collectively, the "Indemnified Parties"), of and from all damages, liabilities and costs, including reasonable attorney's fees and court costs , and liability for personal injury, bodily injury to persons, damage to property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed , to the extent caused by the negligent acts, errors, or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.

(b) Contractual Indemnity. To the fullest extent permitted under California law, and in accordance with California Civil Code 2782.8 which is fully incorporated herein, Consultant shall contractually indemnify and hold harmless the Indemnified Parties from and against any liability, damages, and costs including reasonable attorney's fees and court costs arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent contractors, subcontractors, subconsultants, and/or its or their employees, agents and representatives, to the extent caused by the negligent acts, errors or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify and hold harmless the Indemnified Parties shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties.

(c) Subcontractors/Subconsultants and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subcontractor, Sub consultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to indemnify and hold pay or cause to be paid to the Indemnified Parties' harmless from benefit, any and all damages, fines, penalties of property of the City to the extent caused by the negligent acts, errors or omissions, or willful misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subcontractors and/or its or their employees, agents and representatives. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The

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indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for liabilities, damages, and costs claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers' compensation act or similar act. The Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant's indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant's covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Consultant shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence, and \$4,000,000 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 \$2,000,000 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.



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(b) Endorsements

Insurance policies shall not be in compliance if they include any limiting provision or endorsement. The insurance policies shall contain, or be endorsed to contain, the following provisions:

(1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. Coverage for the additional insureds shall apply to the fullest extent permitted by law.

Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of 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.

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(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 Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant 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 Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

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(h) Failure to Maintain Coverage

Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subcontractors

Consultant shall be responsible for causing Subcontractors/ Subconsultants to purchase the same types and limits of insurance in compliance with the terms of this Agreement, including adding the City as an Additional Insured, providing Primary and Non-Contributory coverage and Waiver of Subrogation to the Subcontractors'/Subconsultant's policies. The Commercial General Liability Additional Insured Endorsement shall be on a form at least as board as CG 20 38 04 13.

11. INDEPENDENT CONTRACTOR

(a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall

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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

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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:

City Engineer  
City of Montclair  
5111 Benito  
Montclair, CA 91763

To Consultant:

Timothy Hartnett  
HR Green Pacific, Inc.  
1260 Corona Pointe, Suite 305  
Corona, CA. 92879

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Consultant from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Consultant in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

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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 "A" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the Consultant, Exhibit "B" hereto. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in the Consultant's proposals.

22. CONFIDENTIALITY

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

23. DISCRIMINATION

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

24. EFFECT OF PARTIAL INVALIDITY

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to 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.

**Agreement No. 22-84  
Holt Boulevard Rehabilitation Project**

28. COST OF LITIGATION

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

29. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

30. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

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

**CITY OF MONTCLAIR**

**CONSULTANT**

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

By: \_\_\_\_\_  
Name: Timothy Hartnett  
Title: Vice President

Attest:

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

By: \_\_\_\_\_  
Name: George Wentz  
Title: Vice President

Approved as to Form:

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

# CITY OF MONTCLAIR



## REQUEST FOR PROPOSALS FOR **Holt Boulevard Street Rehabilitation Project**

Proposal due date: July 20, 2022 at 10:00 a.m.



## **INTRODUCTION**

The City is seeking an engineering firm to prepare plans and specifications to rehabilitate Holt Boulevard street improvements from Ramona Avenue to Benson Avenue. The segment of Holt Boulevard from Mills Avenue to Ramona Avenue was rehabilitated in 2020. Holt Boulevard, a generally commercial corridor, is a divided arterial, an unrestricted truck route, and an Omnitrans bus route. Currently, San Bernardino County Transportation Authority (SBCTA) and Omnitrans are completing (90% complete) the West Valley Connector Corridor Project, which will provide a bus rapid transit (BRT or referred as Express Bus) route with multiple BRT Stations, and pedestrian and bicycle access improvements. East & west bound Holt Boulevard BRT Loading Stations are planned at Ramona and Central avenues in the City of Montclair. The City's Holt Boulevard street rehabilitation project shall be coordinated with the West Valley Connector Corridor Project.

## **BACKGROUND**

The City's General Plan incorporates a transition from a traditional automobile prioritized transportation systems to the concept of Complete Streets where streets are designed and operated for safe access for all. Creating a balance for all users of all age groups and all abilities, including pedestrians, bicyclists, motorist, and public transportation users.

The current Holt Boulevard street configuration includes curb and gutter, adjacent sidewalk, on street parking, two (2) vehicular travel lanes each way, and a landscaped median. The General Plan Update that is underway identifies the addition of a curb adjacent 5 foot landscaped parkway, maintaining the two (2) travel lanes (Figure B27). In late 2020, the City completed the Montclair Active Transportation Plan which identifies the incorporation of a Class II – Buffered Bicycle lane or Class IV – Separated Bicycle Lane from Mills Avenue to Benson Avenue (Figure 4-2). These planning documents are available on the City's Website under "Current Projects in Montclair."

City staff believes an alternative to the curb adjacent landscape parkway proposed in the General Plan Update is to implement a buffered bike lane, which would protect both bicyclists and pedestrians from motor vehicles. This approach will achieve the goals and objectives of the two planning documents in a cost effective manner. Furthermore, this alternative can be implemented in phases through a short (quick build) and long term (ultimate) corridor development approach.

The consultant will be responsible for preparing the necessary plans to address both the short and long term development plan. In both cases, on street parking will be eliminated, except adjacent to the City's Reeder Ranch and Park development project

located on the south side of Holt Boulevard between Amherst Avenue and Ramona Avenue. The Reeder Ranch and Park Project is presently under design development and has limited onsite parking potential. Off site, on street parking, will be maintained along the south side of Holt Boulevard from Amherst to Ramona avenues. Coordination with the consultant preparing the Reeder Ranch and park improvements will be required. The Consultant will be required to incorporate final drive approaches, and parking, sidewalk, curb, street lighting, etc., adjustments to support the Reeder Ranch and Park Project into the Holt Boulevard street improvements plans.

Holt Boulevard (formerly State Route 26) is an older developed corridor that has undergone some changes over the years. The consultant shall evaluate the existing drive approaches to assess the viability of potentially eliminating some driveway cuts to reduce cross traffic and improve safety. This evaluation shall be presented to the City in a technical report. The final City approved adjustments to driveway locations and associated improvements will be incorporated into the project.

The following is a description of the alternate street corridor short and long term plan.

Short-Term Development Condition:

- Plans to Implement a Class II - Buffered Bicycle Lane (Thermoplastic & Markers)

The Short-Term Striping plans shall be prepared on Holt Boulevard for the reach from Mills Avenue to Benson Avenue. The segment of Holt Boulevard from Mills Avenue to Ramona Avenue was completed in advance of the Montclair Active Transportation Plan. Therefore, the striping does not provide for the bike lane facilities. This project will include ultimate striping improvements for Holt Boulevard from Mills to Benson avenues. These striping plans shall mirror/overlay the layout for the Long-term improvements. Thus, the striping configuration shall conform to radius taper (truck turning) requirements, etc.

Long-Term Development Condition:

- Plans to Implement a Class IV – Separated Bicycle Lane (Hardscape/Landscape)

The separated bicycle lane shall consist of a raise curb and transition radius taper and a coordinated landscaped area that physically separates motorists from the curb adjacent bicycle lane. An example of this concept is Rosemead Boulevard in Temple City.

The Consultant shall provide hardscape, landscape and irrigation construction plans for the entire reach of Holt Boulevard (Mills Avenue to Benson Avenue). These plans shall provide the layout and necessary detail for the following:

- Raised curb and gutter, and transition radius taper (truck turning);
- Pavement striping/markers and signage;
- Pavement protection details;
- Drought Tolerant (California Friendly & application suitable) Landscape pallet and planting pattern\*;
- Irrigation layout, materials, details and MWELo Calculations; and
- Other appurtenances

\*The Consultant shall submit a landscape pallet and planting options for City approval. A rendering of the final landscape shall be provided.

A few years ago, the City of Montclair began installing bicycle paths in accordance with the Active Transportation Plan to provide safe alternate transportation options for the community. These alternative transportation options improve quality of life and reduce greenhouse gas emissions and provide the necessary facilities for a healthy community. The Long-Term Development Condition detail plan(s) will allow the City to present a shovel ready project, on a major thoroughfare that encourages all ages of bike riders due to a higher level of bicyclist projection. These documents also provide a coordinated corridor plan that the City can use as a guidance document.

## **SCOPE OF SERVICES**

In addition to evaluating and designing the necessary street improvements associated with the Short and Long Term Corridor Development plans and preparing a technical report regarding driveway cuts, the street pavement rehabilitation improvement work shall be constructed from Ramona Avenue to Benson Avenue and shall include the following items, but is not limited to:

- Addressing spot pavement and subgrade repair;
- Grinding (3") and installing Asphalt Rubber Hot Mix (ARHM) Pavement Overlay;
- Upgrading handicapped ramps to comply with ADA requirements;
- Preparing signage and striping plans, including provisions to ensuring smooth and safe vehicular and bicycle transitions;
- Landscape median modifications/upgrades (replacement of plants & damaged hardscape, and safety measures/signage);
- Coordination, assistance (providing AutoCAD Base & UG Utility Plan Information) to the City's Traffic Engineering firm which will prepare improvement plans and technical specification to implement Traffic Signal Upgrades & Traffic Signal Interconnect and Broadband Fiber Optic system and appurtenances. The

Consultant shall incorporate these traffic construction documents into the street improvement project construction documents; and

- Coordination with adjoining cities of Pomona & Ontario existing improvements

The preparation of plans and specifications for bidding purposes also requires coordination with utilities, and conformance with all regulatory requirements.

The Consultant shall provide plan/specification review submittals to the City at 60%, 90%, and 100% complete. Consultant shall provide preliminary and final estimates of probable construction costs. The Consultant shall also provide an estimate of probable cost for the implementation of the Long-Term Landscape barrier improvements. The Consultant shall attend progress meetings and prepare meeting minutes. The consultant shall submit a written progress report with progress payment requests.

The fee proposal shall include all typical project related and due diligence work to prepare accurate, thorough and complete construction documents.

Final product deliverables:

- Technical Report(s)
  - Driveway cuts
  - Landscape Pallet & Planting Options
  - Engineering Probable Cost Estimates (Short & Long Term Improvements)
- Signed and stamped mylar plans (and/or plan and profile sheets), 24”X36”
- Signed and Stamped Specifications
- Plans & Specifications in .PDF format
- Final AutoCAD drawing files
- Final Specifications in Word format
- As-built mylars and a PDF as-built file
- All project related work products and/or documents as requested by the City

The City will address the project CEQA requirements. However, the consultant may be requested to provide exhibits to facilitate CEQA determination and Council approvals.

### **PROPOSAL FORMAT AND CONTENT**

The consultants requested to submit a proposal have submitted a Statement of Qualifications and are prequalified. Consultants shall limit their proposal to 10 pages, excluding cover and resumes. The proposal shall provide all the information requested in this RFP. The Consultant’s proposal shall contain the following information and shall be organized as follows:

- a. Project Team

An organizational chart indicating principals and key project team members with an indication of their involvement in the project. Also provide resumes of the key personnel involved with this project including personnel from sub-Consultants.

For the project engineer/architect and project manager, include information for three (maximum) recent *similar* projects on his/her record of completion. Include reference contact person, address, and telephone number.

b. Project Scope Work/Work Task Description

Provide a fully developed proposal and task description of the work items planned by the consultant to complete the preparation of the improvement plans and specifications for this project.

c. Project Scheduling

Provide a schedule identifying milestones for the major tasks in the development of the street improvement construction documents, beginning with the Notice to Proceed.

d. Resource Requirements

Provide a man-hour and fee estimate for the proposed scope of work. Please state all assumptions upon which the estimates are based.

e. Availability

Provide a statement that the proposed team have availability to perform the services in a timely manner. Continuity and commitment is important to the quality and timely completion of the project. The designated project manager and project engineer shall remain on the project unless otherwise allowed/requested by the City.

f. Fee Schedule

The fee proposal shall include a not-to-exceed (NTE) figure and hourly billing rates for typical staff classifications and cost breakdown per task. These rates will be used to negotiate any additional work the City may request. All assumptions upon which the costs are based shall be stated.

Agreement

Exhibit A is a copy of the City's professional services agreement. Statement certifying that you agree to the City's Consulting Services Agreement terms and conditions. Any proposed edits to the agreement shall be submitted with the proposal for staff's review and consideration.

## Insurance

Proof of insurance requirements addressed in the professional services agreement of this Request for Proposal shall be submitted by the selected Consultant upon execution of the original contract for submittal to the City Council for their consideration.

All proposers shall submit a “Statement Certifying Insurance Coverage” certifying that the required insurance coverage will be obtained by the Consultant, and that the Consultant understands said coverage is prerequisite for entering into an agreement with the City. The Consultant is required to confirm with its insurance carrier that it can meet all the requirements for insurance. Failure to meet the insurance regulations as set forth shall result in the Consultant’s disqualification.

## SUBMITTAL OF PROPOSAL

Consultants interested in responding to this Request for Proposal shall submit a proposal by **10:00 a.m. on July 20, 2022**. The proposal shall be organized as described in the “Proposal Format and Contents.” **Any proposals received after 10:00 a.m. on July 20, 2022 will be returned unopened.**

Proposals shall be submitted electronically through the Planet Bid platform and one paper copy transmitted to the City to the attention of:

**Rosemary Hoerning, PE, PLS, MPA  
City Engineering Consultant  
City of Montclair  
5111 Benito Street  
Montclair, CA 91763**

Envelope for proposals shall be clearly marked with the notation: “DO NOT OPEN-PROPOSAL FOR HOLT BOULEVARD STREET IMPROVEMENT PROJECT”

## SELECTION PROCEDURES

The proposals received by the submission date will be evaluated on the basis of their responsiveness to this RFP. The City of Montclair reserves the right to establish, add, delete, or modify criteria by which the proposals will be evaluated and to weigh the criteria according to the City’s priorities.

Criteria for the evaluation of the proposals may include, but need not be limited to the following:

- Consultant’s demonstrated understanding of the scope of work.

- Completeness of proposal.
- The key project team members' experiences and record in performing similar work.
- Timeliness in accomplishing work assignments for projects in the agreed work.
- The resources required to perform the requested services and fee proposal
- The consultant's comments on the professional services agreement or exceptions.

Those consultants considered most responsive to this RFP may be requested to attend at least one interview with the City. The City may determine that a selection can be made without conducting interviews. The tentative time for the interview is the week of **July 25, 2022**, subject to scheduling.

### **RIGHT TO REJECT ALL PROPOSALS**

The City reserves the right to reduce or revise elements of the scope of work prior to the award of any Contract. Furthermore, the City reserves the right to reject any or all proposals submitted and no representation is made hereby that any Contract will be awarded pursuant to this Request for Proposal, or otherwise. All costs incurred in the preparation of the proposal, in the submission of additional information and/or in any other aspect of a proposal prior to the award of a written contract will be borne by the proposer.

The City will provide only the staff assistance and documentation specifically referred to herein and will not be responsible for any other cost or obligation of any kind which may be incurred by a proposer. All proposals submitted to the City in response to this Request for Proposal shall become the property of the City.

### **QUESTIONS**

For any questions regarding this Request for Proposal, please utilize the planet bid platform. All questions will be responded to. All questions and answers will be available to all invitees to this request for proposal for engineering services.

However, if there is an issue that requires direct contact, please contact Rosemary Hoerning, City Engineering Consultant at (909) 625-9446 or [rhoerning@cityofmontclair.org](mailto:rhoerning@cityofmontclair.org)

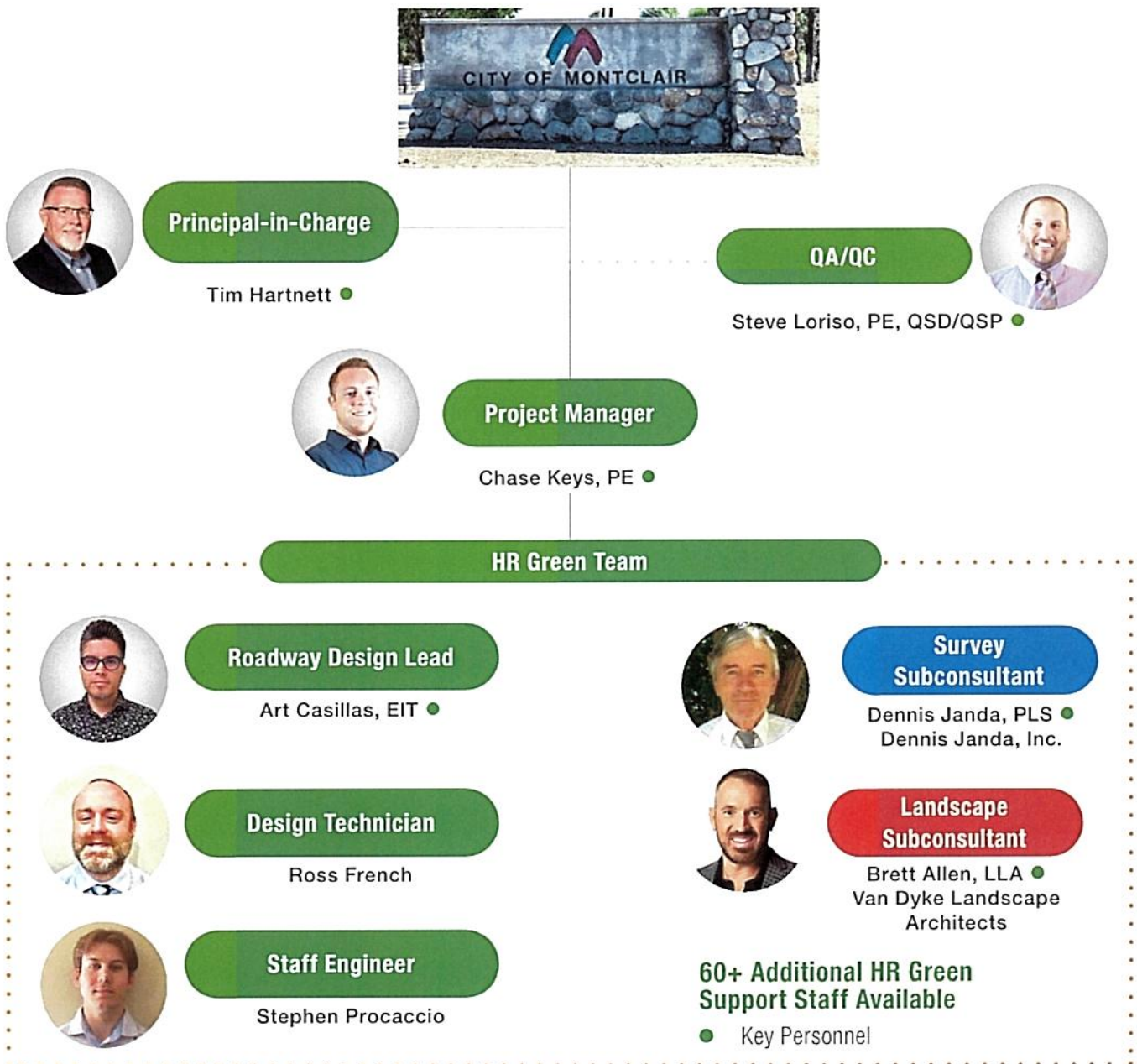
- Exhibit A – Professional Services Agreement
- Exhibit B – General Plan Update – Figure B27
- Exhibit C – Montclair Active Transportation Plan – Figure 4-2
- Exhibit D – 90% Submittal West Valley Connector Corridor Project

## a. Project Team—Uniquely Experienced to Assist the City

The City of Montclair faces many challenges to meet the needs of residents, businesses, and visitors. Among the diverse list of roadway improvement and capital projects the City is current taking on, the Holt Boulevard Street Improvement project requires an experienced engineering firm that is responsive, and prioritizes close communication, quality, integrity, detailed documentation, technical proficiency, and stewardship to protect your interests and realize your vision. HR Green Pacific, Inc. (HR Green) is currently providing the same services for Holt Avenue for the City of Pomona directly adjacent to this project. We have also provided similar rehabilitation and roadway engineering services to the City of Claremont including Class II and Class IV bike lanes, and for the City of Moreno Valley for their 2021-2022 Citywide Pavement Rehabilitation project, including over 80 miles of arterial pavement rehabilitation and over 50 miles of bicycle lanes. This specific background and experience makes us uniquely qualified to meet and exceed the City's requirements.

### Primary City Contact

Your primary point of contact is **Chase Keys, PE**, our assigned **Project Manager**. Chase will see that all resources are allocated to your project as needed, serve as part of our QA/QC team, and will be available for requested meetings with the City. His resume and work experience, along with that of the Key Personnel and Recent Similar Projects are found in the Appendix.





## b. Project Scope Work/ Work Task Description

As each City along the route prioritizes its use through the community, Holt Boulevard continues to evolve from the vehicle-centric days of former US Route 60 when it simply connected to Los Angeles as Valley Boulevard. This is evidenced through the municipal General Plans, including the recent Montclair Active Transportation Plan, by incorporation of bicycle facilities.

Although the immediate improvements associated with this project (short-term development condition) are likely to have little impact on the existing business and residents along Holt Boulevard, the incorporation of the Class IV separated bikeway routes will need to be carefully planned out as driveways could be significantly impacted. This is where HR Green can assist and guide the City of Montclair through the process of developing plans for the short-term and long-term projects. Through our on-going project development with the City of Pomona for their Holt Avenue improvements, HR Green has analyzed the movements (vehicle and pedestrian) at most driveways within Pomona's portion of Holt Avenue.

This analysis will be critical in Montclair's development of this project as the impacts will affect the number of openings maintained in the Class IV bikeway, but also will save the City time, effort, and money as HR Green already has deep familiarity and boots on the ground managing adjacent projects along the transportation corridor.

### PHASE 1 – PROJECT MANAGEMENT AND COORDINATION

Upon receipt of the Notice to Proceed, a project kick-off meeting will be held to provide an opportunity for the HR Green design team and City Staff to discuss the goals of the City and the project requirements. Minutes of this and all subsequent meetings will be prepared documenting subjects discussed, decisions made, along with actions items and their responsible party.

Progress meetings will be held monthly (or another frequency as determined by City staff) to discuss design, compare cost estimates with available budgets, and to obtain City feedback/approval on progress made.

This phase also includes coordination with the City's traffic engineering firm to implement traffic signal upgrades and interconnect as well as a broadband fiber optic system and appurtenances into the final improvement plans. In addition, we will also coordinate with other affected stakeholders such as the adjoining Cities of Pomona on Ontario. Lastly, we will be sure to coordinate with the Reeder Ranch Park development to ensure final improvements of that development are incorporated into our plans.

#### Deliverables

- ▶ Meeting agendas/minutes
- ▶ Invoicing

### PHASE 2 – UTILITY COORDINATION

HR Green is a member of the USA Dig Alert design service, from which we can download contact information to obtain

plans of existing utilities within the project limits. If the City also maintains a list of utility contacts HR Green will combine that information with what is provided via Dig Alert to complete a comprehensive list of contacts.

HR Green will contact this list of potentially affected utilities early in the project using the City's standard utility letter format. If the City does not have a preferred format, HR Green will provide a sample for the City's review and approval. It is important to gather utility information as early as possible to complete the base mapping for the project. Utilities will not be shown on the pavement preservation exhibits, but will be included in the coordination process to be sure utilities are aware of any moratorium to be placed

A total of three utility notification letters will be sent out through the course of the project:

- ▶ 1st Letter – Shortly after the Notice to Proceed is issued requesting utility information
- ▶ 2nd Letter – After the completion of the 60% plans to confirm proper location of existing facilities and serve as a "Notice to Prepare to Relocate" if deemed necessary
- ▶ 3rd Letter – After completion of 100% plans and serve as the "Notice to Relocate Immediately" if deemed necessary

Copies of all communication with the utility companies and the utility disposition matrix will be kept throughout the project and will be submitted to the City with each progress submittal.



**Deliverables**

- ▶ Utility notification letters with necessary attachments
- ▶ Copies of all utility correspondence
- ▶ Utility coordination matrix

**PHASE 3 – PRELIMINARY ENGINEERING**

**TASK 3.1 – DOCUMENT RESEARCH**

HR Green will work with City staff to obtain all readily available as-built plans and record maps to aid in the drawing of the project base maps. If as-built plans are unavailable high resolution aerial imagery will be used in its place.

**TASK 3.2 – TOPOGRAPHIC SURVEY**

Topographic survey will extend from ROW to ROW including 50' past curb returns on side streets and intersections in support of engineering design to include 50' x-section intervals along pavement, together with locating features including but not limited to, utility covers, catch basins, pavement limits, curb ramps, driveways, curb and gutters, sidewalks, streetlights and poles, power poles, traffic signs, fences/walls, gates etc.

An engineering base map and right of way map will be prepared with adjacent parcel lines to include the results of the field survey with 1' contour intervals at 20-scale.

**TASK 3.3 – FIELD RECONNAISSANCE**

After the completion of the project base map, HR Green will perform a thorough field review to gain a good understanding of the existing conditions and verify the accuracy of the base maps. The field work will also identify any areas of failed curb/gutter, sidewalk, driveway approaches and AC pavement. We will also document the existing median landscape and hardscape and provide recommendations for replacements and upgrades.

**TASK 3.4 – EXISTING DRIVEWAY ACCESS EVALUATION**

HR Green will document all existing drive approaches with access to Holt Boulevard along the corridor. We will review all adjoining or alternate site access options and provide recommendations on what/if any existing driveway access points can be eliminated as part of the project.

**Deliverables**

- ▶ CAD base plans
- ▶ Field evaluation notes
- ▶ Existing driveway access technical report

**PHASE 4 – PLANS, SPECIFICATIONS AND ESTIMATE (60%, 90%, AND FINAL)**

**TASK 4.1 – IMPROVEMENT PLANS**

After City approval of the proposed cross sections throughout the project corridor, HR Green will proceed with the preparation of 60% plans. These plans will include pavement rehabilitation, areas of AC reconstruction (deep dig outs), locations of curb/gutter, sidewalk, and drive approach replacements, approved drive approach removals, locations of ADA access ramps to be replaced, median hardscape replacement/modifications, as well as proposed Class II buffered bike lanes. ADA access ramps to be replaced shall reference either City standard plans or Caltrans standard plans and a detailed design will not be completed. Some notes may still need to be added, but the design will be substantially complete. Any comments from the City on the 60% plans will be addressed, all required notes added, and a 90% plan set will be provided for final comment. All final comments will then be addressed, and the final signed and sealed plan set will be provided on mylars ready for City approval and signatures.

In addition to the design of the project with Class II buffered bike lanes, a separate overlay for future improvements will include the design of curb and landscape barriers to create a Class IV bike lane.

The traffic signal modifications/interconnect in addition to the fiber optic system plans will be incorporated into the final constructable improvement plan package. We will also be sure to include all final proposed improvements approved as part of the Reeder Ranch Park development.

**TASK 4.2 – LANDSCAPE AND IRRIGATION PLANS**

Our team will first prepare a conceptual landscape palette and proposed planting options for City's review and approval. Once approved, we will prepare a digital rendering of the approved planting options. We will also request City approval on all irrigation materials. Once plant types and irrigation materials are approved by the City, we will proceed with the preparation of 60% landscape and irrigation plans, including planting plans, legends, details, and specifications, irrigation/sleeving plans, details, legends and specifications. Any comments from the City on the 60% plans will be addressed, all required notes added, and a 90% plan set will be provided for final comment. All final comments will then be addressed, and the final signed and sealed plan set will be provided on mylars ready for City approval and signatures.



This task also includes the calculation of irrigation run times, irrigations calculations, notes, and pump designs if applicable.

**TASK 4.3 – CONTRACT DOCUMENTS**

HR Green will prepare draft contract documents for inclusion in the 60%, 90% and final submittal. Any comments from the City on the draft contract documents will be addressed and the final signed and sealed contract documents will be provided for City approval and signature.

The traffic signal modifications/interconnect in addition to the fiber optic system technical specification will be incorporated into the final constructable bid document package.

**TASK 4.4 – OPINION OF PROBABLE CONSTRUCTION COST**

HR Green will prepare a preliminary cost estimate for inclusion in the 60% submittal. Any comments from the City will then be addressed and a 90% cost estimate will be provided for final comment. All final comments will then be addressed, and the final cost estimate will be provided.

In addition to the construction cost estimate that will include the interim Class II striped bike lane, and alternative cost estimate will be provided for the future Class IV bike lanes at each submittal.

**Deliverables**

- ▶ Conceptual landscape palette and planting options
- ▶ 60%, 90%, and final improvement plans
- ▶ 60%, 90%, and final landscape and irrigation plans
- ▶ 60%, 90%, and final contract documents
- ▶ 60%, 90%, and final cost estimates
- ▶ 3D rendering of final approved landscape option

Final plans will be provided on 24" x 36" signed and stamped mylars, a PDF, and the AutoCAD .DWG. Specifications will be provided as a signed and stamped hard copy in addition to the word document. The final cost estimate will be provided as both a hard copy and the excel document.

**Note:** The Contract documents are generally prepared in accordance with the provisions of the Standard Specifications and Standard Plans for Public Works Construction ("Greenbook"); Montclair standard construction agreement; "boiler plate" contract document; City standard plans; and Caltrans standard plans and specifications as appropriate.

**PHASE 5 – AS-BUILT PLANS**

At the completion of project construction HR Green will collect the red-line markups prepared by the contractor. These markups will be used to create a final as-built set of the construction drawings.

**Deliverable**

- ▶ Final as-built drawings (mylars and PDF)

**Note:** This task assumes that no major design changes will be incorporated.



# c. Project Scheduling

ID	Task Name	Duration	Start	Finish
1	<b>CITY OF MONTCLAIR NOTICE TO PROCEED</b>	0 days	Mon 8/22/22	Mon 8/22/22
2	<b>PROJECT MANAGEMENT AND COORDINATION</b>	110 days	Mon 8/22/22	Fri 1/20/23
4	<b>UTILITY COORDINATION</b>	100 days	Mon 8/22/22	Fri 1/6/23
6	<b>PRELIMINARY ENGINEERING</b>	65 days	Mon 7/25/22	Fri 10/21/22
7	Existing Document Research	10 days	Mon 8/22/22	Fri 9/2/22
8	Topographic Survey	30 days	Mon 8/29/22	Fri 10/7/22
9	Field Check and Existing Condition Photos	2 days	Tue 10/11/22	Wed 10/12/22
10	PLANS, SPECIFICATIONS, AND ESTIMATES (60%, 90%, FINAL)	15 days	Mon 10/3/22	Fri 10/21/22
11	60% PS&E	25 days	Mon 10/10/22	Fri 11/11/22
13	Submit 60% Package to Montclair	0 days	Fri 11/11/22	Fri 11/11/22
14	City of Montclair Plan Check	15 days	Mon 11/14/22	Fri 12/2/22
15	90% PS&E	14 days	Mon 12/5/22	Thu 12/22/22
16	Submit 90% Package to Montclair	0 days	Thu 12/22/22	Thu 12/22/22
17	City of Montclair Plan Check	9 days	Tue 12/27/22	Fri 1/6/23
18	FINAL PS&E	10 days	Mon 1/9/23	Fri 1/20/23
19	Submit FINAL Bid Package to Montclair	0 days	Fri 1/20/23	Fri 1/20/23



P A C I F I C

Client: City of Montclair  
 Project: Holt Boulevard Street Rehabilitation Project  
 Date: 7/20/2022



HRGreen

Holt Boulevard Street Improvement Project

City of Montclair

Annual Milestone

Manual Summary Rollup

Manual Progress

d. Resource Requirements / f. Fee Schedule

<b>HR GREEN - FEE PROPOSAL</b>		TOTAL HOURS		TOTAL PROJECT COSTS		COST PER HOUR/UNIT (CHARGE/OUR RATE)		TOTAL LABOR COST	
PROJECT NAME: HOLT BOULEVARD STREET REMEDIATION PROJECT		1246		\$ 172,920.00		\$ 129,179.50		\$ 304,430.75	
PROJECT NUMBER: 220297									
CLIENT: CITY OF MONTCLAIR									
CLIENT CONTACT: ROSEMARY HERRING, PE, PLS, MPA									
PROJECT MANAGER: CHASE KEYS									

TASK	DESCRIPTION OF TASK	Labor Task Total	ODC Task Total	Subts Task Total	Task Total	% OF TOTAL LABOR COST										Mileage Auto	Reimbursables	Sub Contractor
						1	53	140	310	321	177	105	1246	15%				
PHASE 1A	PROJECT MANAGEMENT AND COORDINATION	\$ 23,440.00	\$ 312.50	\$ -	\$ 23,752.50	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 1A	UTILITY COORDINATION	\$ 5,320.00	\$ -	\$ -	\$ 5,320.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 1A	Utility Verification Letters (3)	\$ 2,520.00	\$ -	\$ -	\$ 2,520.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 3	PRELIMINARY ENGINEERING	\$ 13,400.00	\$ 62.50	\$ 70,150.00	\$ 83,612.50	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
3.1	Site Existing Utilities	\$ 1,200.00	\$ -	\$ -	\$ 1,200.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
3.2	Site/Utility Documentation Review	\$ 1,000.00	\$ -	\$ 70,150.00	\$ 71,150.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
3.3	Field Reconnaissance Survey	\$ 3,690.00	\$ 62.50	\$ -	\$ 3,742.50	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
3.4	Existing Driveway Access Evaluation	\$ 7,480.00	\$ 62.50	\$ -	\$ 7,480.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 4	PLANS SPECIFICATIONS AND ESTIMATES (90%, 90%, AND FINAL)	\$ 123,720.00	\$ 1,681.25	\$ 98,028.50	\$ 184,430.75	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
4.1	Improvement Plans	\$ 112,520.00	\$ 1,650.00	\$ -	\$ 114,170.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Owner Street (1)	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Details & Typical Sections (6)	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Street Improvements (Plan only) (4)	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Class IV Medians (Plan and Profile) (10)	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Signs and Striping (5)	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
4.2	Landscaping and Irrigation Plans	\$ -	\$ -	\$ 59,028.50	\$ 59,028.50	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
4.3	Contract Documents	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
4.4	GOIC	\$ -	\$ -	\$ -	\$ -	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	Field Check with client	\$ 2,880.00	\$ 31.25	\$ -	\$ 2,911.25	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 5	GOIC	\$ 10,320.00	\$ 275.00	\$ -	\$ 10,320.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
PHASE 5	ASBUILT PLANS	\$ 5,040.00	\$ 275.00	\$ -	\$ 5,315.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						
-	As-built Plans	\$ 5,040.00	\$ 275.00	\$ -	\$ 5,315.00	0.007705991	0.006697928	0.173440632	0.350062298	0.213480222	0.127848341	0.006979993						

e. Availability

HR Green values the same continuity and commitment that the City feels is important to the quality and timely completion of the project. Our proposed team are the same staff working on the current Holt Avenue project for the City of Pomona, and have availability to perform these services in a timely manner while providing the City of Montclair increased continuity for this major arterial roadway project that will benefit both cities. The designated project manager and project engineer shall remain on the project unless otherwise allowed/requested by the City.

**HR2** Holt Boulevard Street Improvement Project

HRGreen  
PACIFIC  
City of Montclair

# Agreement

The sample contract provided contains language that should be modified or clarified to be more specific to the services being delivered. Based on our review, we believe revisions will provide greater clarity as to contractual obligations as well as compliance with state law requirements, which will benefit both parties. If selected, HR Green would like the opportunity to work with the City to develop the proposed agreement and address very specific issues. We would be prepared to discuss these matters immediately upon selection to assure that no time is lost and that the proposed work can be carried out in a timely manner.

Following are examples of items that we would like to change or modify:

### 3. PERFORMANCE

Consultant shall at all times ~~faithfully, and competently~~ perform all tasks described herein ~~in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing at the same time and in the same or similar locality. 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. Consultant shall have the duty to prepare any design documents free from defects.~~

### 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 in a manner consistent with professional standard of care. City after the date of default and can terminate this Agreement after providing Consultant seven (7) days prior immediately by written notice if the Consultant is in default of this Agreement 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 to the extent the default is without fault or negligence of the Consultant, it shall not be considered a default.~~

### 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, ~~and payment to Consultant for all monies due under this Agreement, all original documents, claims, applications, including computer files, notes, and other documents prepared by Consultant during its performance of services under in the course of providing the services to be performed pursuant to this Agreement ("Documents") 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. Documents are not intended or represented to be suitable for reuse by the City or others on any other project. Any reuse or modification of the work product without the prior written consent of Consultant will be at the sole risk of the City. The City agrees to indemnify and hold Consultant harmless from any and all liabilities, damages, and costs arising out of or related to the misuse or unauthorized reuse of Documents. 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. In accordance with California Civil Code 2782.8 which is fully incorporated herein, Consultant shall ~~defend, indemnify, and hold harmless~~ the City, its ~~present and former officers, directors, and 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, liabilities, and costs~~ sums, or any other matters threatened or presently asserted, including reasonable attorney's fees and court costs ~~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), and arising directly or indirectly out of any liability or claim of loss or liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, to the extent caused by or arising out of the negligent acts, errors, or omissions, or willful intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities performing work for Consultant.~~

(b) Contractual Indemnity. To the fullest extent permitted under California law, and in accordance with California Civil Code 2782.8 which is fully incorporate herein, Consultant shall contractually indemnify, ~~defend and hold harmless~~ the Indemnified Parties from and against any liability, damages, and costs (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including reasonable attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including

but not limited to Consultant's officers, agents, representative, employees, independent contractors, subcontractors, subconsultants, ~~or affiliated or related entities~~ and/or its or their employees, agents and representatives, ~~to the extent caused by the or arising out of all negligent acts, errors or omissions, or intentional willful misconduct of Consultant, including its subcontractors, subconsultants, employees, agents and other persons or entities performing work for Consultant.~~ Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, ~~defend and hold harmless~~ the Indemnified Parties shall ~~apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties.~~ ~~Consultant's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.~~

(d) City Lost or Damaged Property – Theft. Consultant further agrees to indemnify and hold pay or cause to be paid to the Indemnified Parties' harmless from benefit, any and all damages, fines, penalties, and loss or theft of property of the City to the extent caused by arising out of or related in any way to the negligent acts, errors or omissions, or willful intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, emissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City's rights to contribution from Consultant, or for the City to dispute Consultant's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for liabilities, damages, and costs 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) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant 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 Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

## Statement Certifying Insurance Coverage

The required insurance coverage will be obtained by HR Green, and we understand said coverage is prerequisite for entering into an agreement with the City. However, HR Green would like to discuss the following exception to the Insurance requirements:

10. Insurance (b) (1) (5)

5. ~~Contain any other exclusion contrary to the Agreement~~



## Appendix



### EXPERIENCE

9 Years

### EDUCATION

BS, Civil Engineering

### REGISTRATION / LICENSE

Registered Civil Engineer,  
CA #90593

## Chase Keys, PE

### *Project Manager*

Chase brings comprehensive experience in design project management, CIP Program Management, and construction management experience of municipal public improvement projects. His experience includes a multi-faceted involvement with Engineering and Public Works Department. Types of projects include roads, drainage, water, sewer, traffic, and parking lots. Chase has helped prepare grant applications for federal, state, and regional funding. Moreover, he has assisted in both the office and field on construction projects. He has served as CIP Manager for the Cities of Jurupa Valley and Hemet, and has also served on site at the Cities of Lake Elsinore, Palos Verdes Estates, and Beaumont in delivering a broad array of projects.

### SELECTED PROJECT EXPERIENCE

#### ▷ Towne Avenue Street (Complete Streets) Improvements, City of Claremont

Project Manager for the City's complete streets project on Towne Avenue from Foothill Boulevard to Base Line Road, which included pavement rehabilitation, ADA improvements, traffic signal modifications, modification to existing raised center median, new raised median to create a Class IV bike lane, signing and striping improvements, and complete landscape and irrigation plans.

#### ▷ Holt Avenue Median Improvements, City of Pomona

Project Manager for the design of approximately 4 miles of pavement rehabilitation and new raised center median along Holt Avenue corridor between Humane Way and Mills Avenue as part of the City's corridor specific plan including a major traffic analysis.

#### ▷ Citywide Pavement Rehabilitation Program, City of Moreno Valley

Project Manager responsible for the street improvements of over eighty (80) miles of arterial/collector streets between two projects and ten phases. The projects included the grind and overlay or slurry seal of arterial or collector streets throughout the City. In addition, the project also included new signing and striping of all streets, including the addition of new Class II and Class III bikeways as well as several bicycle boulevards. HR Green had to take into the account the City's adopted bicycle and pedestrian master plan and existing on-street parking to design the most effective and efficient corridors.

#### ▷ Foothill Boulevard Pavement Rehabilitation, City of Rancho Cucamonga

Project Manager for the rehabilitation of Foothill Boulevard from Milliken Avenue to Monet Street. The design included a cold mill and overlay of the existing AC pavement. The revised signing and striping plans included not only the three existing travel lanes in each direction, but the addition of new Class II bike lanes throughout the corridor, some of which being buffered. This portion of Foothill Boulevard is directly adjacent the City's Victoria Gardens Mall and Interstate 15 and experience heavy traffic. Careful planning was needed to ensure the new Class II bike lanes would be accessed safely by the City's bicyclists.

#### ▷ Citywide Pavement Rehabilitation Program, City of Jurupa Valley

Project engineer responsible for the design of a \$9M Citywide neighborhood pavement rehabilitation program spanning seven (7) project phases. Prior to completing PS&E packages, Chase performed "windshield surveys" of all local streets within the City (approximately 190 centerline miles) in order to assign treatment recommendations and prioritize projects. In just 18 months completed the design as well as performed construction management of all 7 projects totaling roughly 40 centerline miles of streets.





## Project Planning and Engineering

### City of Pomona

**CHALLENGE:** HR Green serves as on-call consultant providing design engineering, construction management, project management, civil engineering plan check and WQMP review services.

**SOLUTION:** Since 2013, HR Green has maintained various on-call civil engineering, plan check, and project management contracts with the City. We have provided design engineering of various roadway, alley way, sidewalk, curb and gutter, and ADA compliance projects citywide. This includes Mission Boulevard construction management for the installation of ADA improvements, signal conduit, and minor drainage improvements. HR Green also provides on-call project management, staff augmentation, and plan review for the Gold Line light rail project, including the extension of the Light Rail Transit line through the City, two bridges at Garey and Town Avenues, and a flyover heavy rail west of Towne Avenue. Comprehensive review services include civil, traffic, railway, environmental and structural engineering, surveying, architecture, landscape, planning, CEQA/NEPA and related proposed work. HR Green has been working with the City of Pomona for the past several years on the planning and development of the Holt Avenue Median Improvements, which is part of a complete streets upgrade for this existing heavily utilized corridor.

### Sample Project

**Holt Avenue Median Improvements:** The project included a thorough traffic analysis of the corridor including taking 24-hour turning movement counts at 85 intersection and 60 private driveways, traffic forecasting, and traffic model development to document existing, future no-build, and build conditions. In total four concepts were prepared working closely with both City staff and the public in order to determine the final build concept.

## REFERENCE

Matt Pilarz  
 City of Pomona  
 505 South Garey Avenue,  
 Pomona, CA 91766  
 909.602.3652  
 matt\_pilarz@ci.pomona.ca.us

## HR GREEN TEAM

Chase Keys—Project Manager  
 Steve Loriso—QA/QC  
 Tim Hartnett—Principal-in-Charge  
 Art Casillas—Roadway Design  
 VDLA—Landscape Design

## SIMILAR KEY ELEMENTS

- ▶ Arterial roadway pavement rehabilitation
- ▶ Driveway access analysis for median closures
- ▶ Landscape/irrigation improvements
- ▶ Project limits adjoin Holt Boulevard



## Project Planning and Engineering

*City of Claremont*

**CHALLENGE:** HR Green provides on-call engineering, on-call plan review/project management, and roadway design to the City of Claremont.

**SOLUTION:** HR Green has provided design services and prepared improvement plans for several projects to better service pedestrians, bicyclists, and improve the overall driveability of roadways.

### Sample Project

**Towne Avenue Street Improvements:** HR Green provided design services for improvements to Towne Avenue that incorporated “complete streets” standards to better serve pedestrians and bicyclists, while improving the drivability of the road for motorists. Some of the features and amenities included traffic signal enhancements, landscaping and hardscape upgrades, pavement repair and the addition of new Class IV bike lanes.

HR Green also performed preliminary engineering to determine the feasibility for incorporating as many “green street” components (i.e., infiltration, dry well, bio-swales, etc.) as possible.

### REFERENCE

Maria Tipping  
City Engineer  
City of Claremont  
207 Harvard Avenue  
Claremont, CA 91711  
909.399.5474  
mtipping@ci.claremont.ca.us

### HR GREEN TEAM

Chase Keys—Project Manager  
Steve Loris—QA/QC  
Tim Hartnett—Principal-in-Charge  
Art Casillas—Roadway Design  
VDLA—Landscape Design

### SIMILAR KEY ELEMENTS

- ▶ Arterial roadway pavement rehabilitation
- ▶ Buffered Class II bike lanes
- ▶ Class IV bike lanes
- ▶ Removal of on-street parking
- ▶ Landscape/irrigation improvements



## Street Rehabilitation Projects

### *City of Moreno Valley*

**CHALLENGE:** The City of Moreno Valley, with a population of 200,000+ is a rapidly growing community with hundreds of miles of deferred pavement maintenance. With additional funding incoming for infrastructure improvements, but limited in-house staff, the City needed consultant assistance to prepare plans for the much needed Citywide Pavement Rehabilitation Program.

**SOLUTION:** The City engaged HR Green to provide full plan preparation for 135 arterial/collector street segments totaling over 80 centerline miles. To expedite the project HR Green assigned a full service design team to provide extensive field reviews, base mapping, utility coordination, pavement rehabilitation recommendations and design, and signing and striping plans per the City's General Circulation Plans and Bicycle Master Plan.

### Sample Project

**2021-2022 Citywide Pavement Rehabilitation:** HR Green provided the street improvement and signing and striping plans for over eighty (80) miles of arterial/collector streets between two projects and ten phases. The project included the grind and overlay or slurry seal of arterial or collector streets throughout the City. In addition to the rehabilitation or maintenance of existing pavement, the project also included new signing and striping of all streets, including the addition of new Class II and Class III bikeways as well as several bicycle boulevards. HR Green had to take into the account the City's adopted bicycle and pedestrian master plan and existing on-street parking to design the most effective and efficient corridors. At the City's request to expedite the project, HR Green was able to complete the design of the first project within six (6) months and the second four (4) months after that.

### REFERENCE

Michael Lloyd  
Public Works Director/City  
Engineer  
City of Moreno Valley  
14177 Frederick Street  
Moreno Valley, CA 92552  
951.413.3146  
michaell@moval.org

### HR GREEN TEAM

Chase Keys—Project Manager  
Steve Loriso—QA/QC  
Tim Hartnett—Principal-in-  
Charge

### SIMILAR KEY ELEMENTS

- ▶ Arterial roadway pavement rehabilitation
- ▶ Buffered Class II bike lanes





## Tim Hartnett

### *Principi-**l**-in-Charge*

Over the past 35 years, Tim has provided ongoing municipal engineering and program/project management services to key municipalities throughout the country, guiding them through periods of extreme growth. He has provided subdivision and site improvement review/approval processing from concept plan through the final plat in accordance with the municipality's Municipal Code, Engineering Standards, applicable development agreement and annexation agreements. He supports strategic decision-making by presenting information to councils, boards, and committees; facilitating public engagement discussions; meeting with developers; and informing residents and business owners of project schedules.

#### EXPERIENCE

35 Years

#### EDUCATION

BS, Engineering Design

#### PROFESSIONAL AFFILIATIONS

American Council of Engineering Companies

Tim has considerable experience performing critical services, such as grants and funding procurement for roadway, parks and facility improvements, construction observation, general engineering advisory services, water and wastewater master planning, capital involvement planning and implementation, organizational/operational assessments, and staff augmentation and support. Tim also acts as the lead contact between HR Green clients and the various design/field staff members executing all projects within the communities he represents

#### SELECTED PROJECT EXPERIENCE

##### ▷ Pavement Rehabilitation and Complete Streets, Various Municipalities

As Principal-in-Charge, Tim provides and/or oversees diverse consulting and advisory services to municipalities across HR Green's client base. This includes master planning, CIP program/project management, staff augmentation, plan review (building and civil), asset management, design management and engineering of infrastructure (roads, drainage, stormwater, water, wastewater, lift stations, site improvements, parks), telecommunications (broadband, fiber, small cell, smart city), organizational/operational assessments, grant procurement and administration, construction management and observation.

##### ▷ Towne Avenue (Complete Streets) Improvements, City of Claremont

Principal-in-Charge for the City's complete streets project on Towne Avenue from Foothill Boulevard to Base Line Road. The project included pavement rehabilitation, ADA improvements, traffic signal modifications, modification to existing raised center median, new raised median to create a Class IV bike lane, widening and reconstruction of existing sidewalks, signing and striping improvements, and complete landscape and irrigation plans.

##### ▷ Citywide Pavement Rehabilitation Program, City of Moreno Valley

Principal-in-Charge for the street improvement and signing and striping plans for over forty (40) miles of arterial/collector streets. The project included the grind and overlay or slurry seal of streets throughout the City. In addition to the rehabilitation or maintenance of existing pavement, the project also included new signing and striping of all streets, including the addition of new Class II and Class III bikeways as well as several bicycle boulevards. HR Green had to take into the account the City's adopted bicycle and pedestrian master plan and existing on-street parking to design the most effective and efficient corridors. At the City's request to expedite the project, HR Green was able to complete the design of all forty miles within six (6) months.



## Steve Loriso, PE, QSD/QSP

### *QA/QC Manager*

Steve has more than 25 years of design, CIP program management, design management, plan review, NPDES/water quality compliance, and construction management experience of municipal public improvement projects. Types of projects include roads, drainage, water, sewer, traffic, grading, and parking lots. Steve has managed the implementation of the Municipal Separate Storm Sewer System (MS4) Permit for various municipalities; performed review of compliance documents for private and public developments and acted as the owner's representative and liaison between design teams and general contractors on facility and infrastructure construction projects.

### EXPERIENCE

25 Years

### EDUCATION

BS, Civil Engineering

### REGISTRATION / LICENSE

Registered Civil Engineer,  
CA #64701

Qualified SWPPP  
Developer/Practitioner  
(QSD/QSP), CA #00503

### SELECTED PROJECT EXPERIENCE

#### ▷ Towne Avenue Street (Complete Streets) Improvements, City of Claremont

QA/QC manager for the City's complete streets project on Towne Avenue from Foothill Boulevard to Base Line Road, which included pavement rehabilitation, ADA improvements, traffic signal modifications, modification to existing raised center median, new raised median to create a Class IV bike lane, signing and striping improvements, and complete landscape and irrigation plans.

#### ▷ Holt Avenue Median Improvements, City of Pomona

QA/QC manager for the conceptual design of approximately four (4) miles of new raised center median along the Holt Avenue Corridor as part of the City's corridor specific plan, including a major traffic analysis involving 85 intersection and 60 private driveways.

#### ▷ Citywide Pavement Rehabilitation Program, City of Moreno Valley

QA/QC manager responsible for the street improvement and signing and striping plans for over forty (40) miles of arterial/collector streets. The project included the grind and overlay or slurry seal of streets throughout the City. In addition to the rehabilitation or maintenance of existing pavement, the project also included new signing and striping of all streets, including the addition of new Class II and Class III bikeways as well as several bicycle boulevards. HR Green had to take into the account the City's adopted bicycle and pedestrian master plan and existing on-street parking to design the most effective and efficient corridors. At the City's request to expedite the project, HR Green was able to complete the design of all forty miles within six (6) months.

#### ▷ Esplanade Avenue Widening, City of Hemet

QA/QC Manager for the widening of Esplanade Avenue to include four through lanes and a sidewalk on the north side. New traffic signals were installed at the intersections, and the project provided increased safety for pedestrians and decreased traffic congestion.

#### ▷ Foothill Boulevard Pavement Rehabilitation, City of Rancho Cucamonga

Project Manager for the rehabilitation of Foothill Boulevard from Milliken Avenue to Monet Street. The design included a cold mill and overlay of the existing AC pavement. The revised signing and striping plans included not only the three existing travel lanes in each direction, but the addition of new Class II bike lanes throughout the corridor. This portion of Foothill Boulevard is directly adjacent the City's Victoria Gardens Mall and Interstate 15 and experience heavy traffic. Careful planning was needed to ensure the new Class II bike lanes would be accessed safely by the City's bicyclists.





## Art Casillas, EIT

### *Roadway Design Lead*

Art has more than 9 years of professional experience as a construction manager and project engineer. He has been involved with road pavement and rehabilitation projects, traffic signal improvements, street widening, and worked with Caltrans for encroachment permits. He has provided services to various public agencies including the Cities of Walnut, San Gabriel, Covina, and Norco.

### SELECTED PROJECT EXPERIENCE

#### EXPERIENCE

9 Years

#### EDUCATION

Bachelor of Science, Civil Engineering

#### REGISTRATION

EIT, CA #149135

OSHA 10-hour Safety Course

#### ► Towne Avenue Street (Complete Streets) Improvements, City of Claremont

Roadway designer for the City's complete streets project on Towne Avenue from Foothill Boulevard to Base Line Road, which included pavement rehabilitation, ADA improvements, traffic signal modifications, modification to existing raised center median, new raised median to create a Class IV bike lane, signing and striping improvements, and complete landscape and irrigation plans.

#### ► Holt Avenue Median Improvements, City of Pomona

Roadway designer for the conceptual design of approximately four (4) miles of new raised center median along the Holt Avenue Corridor as part of the City's corridor specific plan, including a major traffic analysis involving 85 intersection and 60 private driveways.

#### ► Second Street Roadway Widening, City of Norco

Art was the designer for this road widening project to allow for on street parking, and installation of curb and gutter. The project was challenging due to the existing grade behind City right-of-way with one side higher than the other, which required a segment of roadway to be super-elevated. Storm drain catch basins were also added along with striping and curb ramps, and a horse trail to accommodate local residents.

#### ► Hillside Avenue, 5th to 6th Roadway Widening, City of Norco

Art was the designer for this project for this road widening project to accommodate on street parking and an installation of curb and gutter. This included widening the existing roadway, adding curb and gutter, signing, striping, and ADA compliant curb ramps. Catch basins were also added to connect to existing drainage and a horse trail to accommodate local residents.

#### ► 2017/18 Great Streets Improvement, Phase I, City of San Gabriel

Art was the construction manager, overseeing all contractors and subcontractors on behalf of the City. This project included multiple residential streets citywide, with a majority of cold mill and overlay. One of the collector roads was designated as cement treated base with asphalt overlay. The project also included striping, curb and gutters, and curb ramps to update to ADA specifications.

#### ► Amar Road Pavement Rehabilitation Project, City of Walnut

Art was the construction manager, overseeing all contractors and subcontractors on behalf of the City. The project included a rubberized asphalt hot mix (ARHM) over cement treated pulverized base, striping and curb ramp work to update to ADA specifications.





**Dennis Janda, PLS**

*Survey Subconsultant*

Dennis offers 43 years of experience in the Land Surveying and Mapping profession beginning with his Military surveying in the USMC 11TH Marines. Dennis' expertise in managing survey and mapping projects in Southwest Riverside County began in 1984 for a large Temecula engineering firm.

Dennis' overall experience with project research, map/exhibit production, boundary surveys, route surveys, engineering surveys, topographic/photogrammetric control surveys and construction staking is quite extensive. His experience also includes Public Works projects for agencies and municipalities providing map review and checks for processing in adherence to owner's standards and specifications and to the Subdivision Map Act along with the production of legal and plats for Dedications, Deeds, etc. He was also the Project Surveyor for many mapping, design/route surveys and construction surveys for Public Work projects throughout California including the City of Menifee since February 2010.

Dennis also has a vast experience in public and private presentations of projects to City Councils, Community Groups, County Board of Supervisors, and Local Agency Formation Committees.

**SELECTED PROJECT EXPERIENCE**

▷ **Survey Services, Various Southern California Agencies**

- Perform Various Survey map and document review for adherence to the City Standards, "conditions of approval", together with state laws and regulations for Subdivision Projects including but not limited to Tentative and Final maps, Parcel Mergers, Lot Line Adjustments, Offers of Dedications, Notice of Vacations, and Easements, Certificates of Compliance and Certificate of Corrections, together with Swing Ties & Final Monument inspections for compliance.
- Investigate and respond to City Staffing about survey related issues regarding surveying, easements, mapping, legal descriptions, and deeds and other related survey issues.
- Research existing record data for but not limited to record maps, deeds, easements, offers of dedications, records of survey, right of ways, monument ties, and benchmarks.
- Prepare legal descriptions and plat maps for but not limited to Offers of Dedications, Notice of Vacations, Grant Deeds and Quitclaim Deeds together with Annexations.
- Prepare digital and hardcopy reports/exhibits for various engineering projects and/or Land Information inquiries.
- Perform Right of Way appraisal surveys.
- Perform topographic/x-sections/as built surveys along with Photogrammetric / Aerial services for various Engineering projects.
- Perform boundary surveys.
- Perform construction staking/certification surveys including potholing of utilities.

**EXPERIENCE**

43 Years

**EDUCATION**

Fort Sill Oklahoma USMC - Advance Survey Training

Palomar College – Survey Program

1981-1984 UCR, G.I.S. Certificate Program

UCR GPS Certificate Program

**REGISTRATION / LICENSE**

Registered Land Surveyor, PLS #6359

**SPECIALIZED TRAINING & CERTIFICATIONS**

Certificate in GPS Survey

Certificate in AutoCAD

Certificate in Esri Software







## Brett Allen, LLA

### *Landscape Subconsultant*

Brett has significant project management experience on projects for cities, counties, school districts and private development including libraries, plazas, corporate campuses, streetscapes, roundabouts, public corridor improvements, hardscape design, campus circulation and public use areas. He has a strong background in hardscape design and construction detailing, native and adaptive regional plant materials, planting design, soils and appropriate planting techniques. Brett also has expertise with large scale irrigation master planning, irrigation design, and construction administration. He has significant experience in preparing irrigation point of connection master plans, demand analyses, hydraulic analyses and coordinating this information with multi-disciplinary teams.

### EXPERIENCE

18 Years

### EDUCATION

BS, Landscape  
Architecture

### REGISTRATION / LICENSE

Licensed Landscape  
Architect State of  
California #6595

Certified Irrigation  
Designer #58129

Certified Landscape  
Irrigation Auditor

Recycled Water Site  
Supervisor

### AFFILIATIONS

American Society of  
Landscape Architects  
(Past President, San Diego  
Chapter)

Building Industry  
Association

### SELECTED PROJECT EXPERIENCE

#### ▷ Holt Avenue, City of Pomona

- Project Manager
- Construction documents of streetscape
- Landscape and Irrigation design

#### ▷ Towne Avenue (Complete Streets), City of Claremont

- Project Manager
- Concept plan and construction documents
- Landscape and Irrigation design

#### ▷ Summerwind Ranch Trails, Calimesa

- Project Manager
- Master plan and design guidelines
- Equestrian, hiking, pedestrian and bicycle trails
- Nature park

#### ▷ 1-10 Corridor, Coachella Valley

- Project Manager
- Thematic Design Program for Monuments & Landscaping
- Durable Materials - CorTen Steel, Concrete
- Desert-Tolerant Native Planting and Irrigation Design

#### ▷ Van Buren Boulevard / 1-215 Interchange, Riverside

- Project Manager
- Provided conceptual design options and landscape architectural construction documents
- Assessment of existing medians with conceptual designs
- Drought adaptive Palo Verde trees, earth-tone gravel and cast-in-place concrete panels



**CITY OF MONTCLAIR**

**AGREEMENT FOR CONSULTANT SERVICES**

**FOR TRAFFIC ENGINEERING – HOLT BOULEVARD**

THIS AGREEMENT is made effective as of August 15, 2022, between the City of Montclair, a municipal corporation ("City") and AGA Engineers, 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 August 16, 2022 and shall remain and continue in effect for a period approximately three years, expiring on June 30, 2025, 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.

5. **PAYMENT**

(a) The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by reference as though set forth in full, based upon actual time spent on the above tasks.

(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's City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

(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 not less than thirty (30) calendar days' prior written notice. The Consultant may only terminate this Agreement for cause, and by giving the City prior notice in writing with a reasonable opportunity to cure any purported default. If the Agreement is terminated by the City, and provided Consultant is not then in breach, the Consultant shall be paid for services satisfactorily rendered to the last working day the Agreement is in effect, and the Consultant shall have no other claim against the City by reason of such termination. The Agreement may be extended beyond the term only by the written agreement of both Parties prior to the expiration of the term of the Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5(c).

**7. DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City's 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. Consultant shall defend, indemnify, and hold harmless the City, its present and former officers, directors, employees, agents, staff, volunteers, mayor, council, boards, committees, and representatives, as broadly interpreted (collectively, the "Indemnified Parties"), of and from all claims, suits, demands, obligations, losses, damages, sums, or any other matters threatened or presently asserted, including but not limited to all legal fees, costs of defense and litigation expenses (including legal fees, expert fees and any other costs or fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly or indirectly out of any liability or claim of loss or

liability for personal injury, bodily injury to persons, contractual liability, errors or omissions, breach, failure to perform, damage to or loss of property, or any other loss, damage, injury or other claim of any kind or nature arising out of the work to be performed by Consultant herein, caused by or arising out of the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, employees, agents, and other persons or entities performing work for Consultant.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Consultant shall contractually indemnify, defend and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, amounts for good faith settlement, or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), arising out of or related to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to Consultant's officers, agents, representative, employees, independent Consultants, subconsultants/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 Consultant, including its subconsultants/subcontractors, employees, agents and other persons or entities performing work for Consultant. Indemnification shall include any claim that Consultant, or Consultant's employees or agents, are or may be considered and treated as employees of the City or are entitled to any employee benefits from City including but not limited to those available under Public Employees Retirement Law. The obligation to indemnify, defend and hold harmless the Indemnified Parties shall apply to all liability as defined above regardless of whether the Indemnified Parties were or are alleged to have been negligent, except that it shall not apply to claims arising from the sole negligence or willful intentional misconduct of the Indemnified Parties. Consultant's obligation to defend the Indemnified Parties is not contingent upon there being an acknowledgement of or determination of the merit of any claims, liability, demands, causes of action, suits, losses, expenses, errors, omissions and/or costs.

(c) Subconsultants/subcontractors and Indemnification. Consultant agrees to and shall obtain executed indemnity agreements in favor of the Indemnified Parties with provisions identical to those set forth from each and every Subconsultant, Subcontractor, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Subconsultant, Subcontractor or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines,

penalties, and loss or theft of property of the City arising out of or related in any way to the negligent acts or omissions or intentional misconduct of Consultant or of Consultant's officers, agents, representatives, employees, independent contractors, subconsultants or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies.

No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the work and shall extend to claims arising after this Agreement is performed or terminated, including a dispute as to the termination of Consultant. The indemnity obligations of Consultant shall continue until it is determined by final judgment that the claim against the City and any Indemnified Parties is determined by final judgment and after exhaustion of any rights of appeal. Further, no aspect of this provision shall impact the City's rights to contribution from Consultant, or for the City to dispute Consultant's refusal to defend and indemnify City.

(f) Limitations on Scope of Indemnity. Notwithstanding the foregoing, Consultant shall not be responsible for indemnification for claims or losses caused by the sole negligence or intentional wrongdoing of Indemnified Parties. Further, the indemnity provided shall be interpreted as broadly as permitted under California law and as to agreements between parties and shall if required be reformed to be consistent with those laws to protect and save this provision for the protection of the Indemnified Parties.

(g) The obligations of Consultant under this or any other provision of this Agreement shall not be limited by the provisions of any workers' compensation act or similar act. The Consultant expressly waives any statutory immunity under such statutes or laws as to the Indemnified Parties. The Consultant's indemnity obligation set forth in this Section 9 shall not be limited by the limits of any policies of insurance required or provided by the Consultant pursuant to this Agreement.

(h) The Consultant's covenant under this Section 9 shall survive the expiration or termination of this Agreement.

10. INSURANCE

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(a) Types of Required Coverages

Without limiting the indemnity provisions of the Contract, the Consultant shall procure and maintain in full force and effect during the term of the Contract, the following policies of insurance. If the existing policies do not meet the insurance requirements set forth herein, Consultant agrees to amend, supplement or endorse the policies to do so.

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office on an "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per each occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Such limit(s) may be satisfied by a combination of both primary and excess coverage.
- (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 if Consultant owns any vehicles, non-owned and hired autos, with minimum limits of \$2,000,000 for bodily injury and property damage, each accident. If Consultant owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement. Such limit(s) may be satisfied by a combination of both primary and excess coverage.
- (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 \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit by disease.
- (4) Professional Liability: Professional Liability insurance with limit of not less than \$3,000,000 each claim and annual aggregate. Covered professional services shall specifically include all services 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, and boards shall be additional insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by of the Consultant or on behalf of the Consultant including materials, parts or

equipment furnished in connection with such services. Coverage for the additional insureds shall apply to the fullest extent permitted by law. Additional Insured Endorsements shall not:

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Consultant
4. Exclude "Third-Party-Over Actions"
5. Contain any other exclusion contrary to the Agreement

Additional Insured Endorsements shall be at least as broad as ISO Forms CG 20 10 11 85; or CG 20 and 10 and CG 2037 and include Consultant's ongoing and completed operations.

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, and boards shall be additional insureds with regard to liability and defense of suits for damages but only to the extent damages are caused by the negligence of the Consultant or on behalf of the Consultant.

Primary Insurance: This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

(3) Workers' Compensation

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation.

(c) Notice of Cancellation

Required insurance policies shall not be cancelled or non-renewed until a thirty (30) day written notice of cancellation has been served upon the Consultant except ten (10) days shall be allowed for non-payment of premium. Consultant agrees to provide City with timely copies of any cancellation or non-renewal Notice(s) it may receive from its insurers within 48 hours of receipt.

(d) Waiver of Subrogation

Required insurance coverages shall not prohibit Consultant from waiving the right of subrogation prior to a loss. Consultant shall waive all rights of subrogation against the indemnified parties and policies shall contain or be endorsed to contain such



a provision. This provision applies regardless of whether the City has received a waiver of subrogation endorsement from the insurer.

(e) Evidence of Insurance

All policies, endorsements, certificates, and/or binders shall be subject to approval by the City as to form and content. These requirements are subject to amendment or waiver only if so approved in writing by the City. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The certificates and endorsements for each insurance policy shall be digitally signed by a person authorized by that insurer to bind coverage on its behalf. At 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 or non-renewed, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction or non-renewal of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

(f) Deductible or Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the City and shall protect the indemnified parties in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. The City may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the Consultant or the City.

(g) Contractual Liability/Insurance Obligations

The coverage provided shall apply to the obligations assumed by the Consultant 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 Consultant; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Consultant under this Agreement.

(h) Failure to Maintain Coverage

Consultant agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the City. The City shall have the right to withhold any payment due Consultant until Consultant has fully complied with the insurance provisions of this Contract. In addition, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

In the event that the Consultant's operations are suspended for failure to maintain required insurance coverage, the Consultant shall not be entitled to an

extension of time for completion of the Work because of production lost during suspension.

(i) Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City.

(j) Claims Made Policies

If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Consultant's Agreement with the City and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least five (5) years from termination or expiration of this Agreement.

(k) Insurance for Subconsultants/Subcontractors

Consultant shall be responsible for causing Subconsultants/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 Subconsultants'/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 CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control and shall not be construed to be employees of City for any purpose, including eligibility under Public Employees Retirement Law. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner. Consultant shall be solely responsible and hold the City harmless for all matters relating to the payment of Consultant's employees, including compliance with Social Security withholdings and all other regulations governing such matters.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for

compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

**12. LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

**13. UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Montclair in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Montclair will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

**14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the project performed under this Agreement.

**15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or subConsultants, shall not without written authorization from the City Building Maintenance Supervisor or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, responses to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subConsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for

admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

(c) Consultant shall comply with all applicable federal, state and local Conflict of Interest laws, including the Political Reform Act (California Government Code, Section 81000, *et. seq.*) and California Government Code, Section 1090, *et. seq.* Consultant covenants that neither he/she nor any officer or principal of their firm have any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by them as an officer, employee, agent or subConsultant. Consultant further covenants that Consultant has not contracted with nor is performing any services, directly or indirectly, with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area and further covenants and agrees that Consultant and/or its subConsultants shall provide no service or enter into any agreement or agreements with a/any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) owning property in the City or the study area prior to the completion of the work under this Agreement. Further, Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to the City as a result of the performance of this Agreement, or the services that may be procured by the City as a result of the recommendations made by the Consultant. The Consultant's covenant under this Section shall survive the termination of this Agreement.

16. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City:	Monica Heredia City Engineer City of Montclair 5111 Benito Street Montclair, CA 91763
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To Consultant: Chalap Sadam  
President  
AGA Engineers, Inc.  
211 East Imperial Highway, Suite 208  
Fullerton, CA 92835

17. ASSIGNMENT AND SUBCONTRACTING

The Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, nor any monies due hereunder, without prior written consent of the City. The City's consent to an assignment of rights under this Agreement shall not release the Consultant from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by the Consultant in violation of this Section 17 shall be void and of no legal effect and shall constitute grounds to terminate this Agreement for cause. The Consultant shall not subcontract any performance required under this Agreement without the City's prior written consent.

18. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, including a City of Montclair business license.

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF PROPOSAL

Consultant is bound by the contents of the proposal submitted by the Consultant, Exhibit A hereto. In the event of conflict, the requirements of this Agreement shall take precedence over those contained in the Consultant's proposal.

**22. CONFIDENTIALITY**

Information and materials obtained by the Consultant from City during the performance of this Agreement shall be treated as strictly confidential and shall not be used by the Consultant for any purpose other than the performance of this Agreement. Consultant's covenant under this Section shall survive the expiration or termination of this Agreement.

**23. DISCRIMINATION**

The Consultant agrees that no person shall be excluded from employment in the performance of this Agreement on grounds of race, creed, color, sex, age, marital status, or place of national origin. In this connection, the Consultant agrees to comply with all County, State and Federal laws relating to equal employment opportunity rights.

**24. EFFECT OF PARTIAL INVALIDITY**

If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and any application of the terms shall remain valid and enforceable under this Agreement or California law.

**25. CLAIMS AGAINST CITY**

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

**26. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**27. NO THIRD PARTY BENEFICIARIES**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**28. COST OF LITIGATION**

If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort or both), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable. In awarding the cost of litigation, the court shall not be bound by any court fee schedule, but shall, if it is in the interest of justice to do so, award the full amount of costs, expenses and attorneys' fees paid or incurred in good faith.

**29. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**30. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

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

**CITY OF MONTCLAIR**

**AGA ENGINEERS, INC.**

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

By: \_\_\_\_\_  
Name: Chalap K. Sadam  
Title: President & Secretary

Attest:

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

By: \_\_\_\_\_  
Name: Greg Wong  
Title: Vice President

Approved as to Form:

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

July 29, 2022

Ms. Monica Heredia, P.E.  
Public Works Director/City Engineer  
City of Montclair  
511 Benito Street  
Montclair, California 91763

**RE: Proposal to Provide Professional Engineering Design Services for Traffic Signal Improvements on Holt Boulevard**

Dear Ms. Heredia:

AGA Engineers, Inc. (AGA) is pleased to present to the City of Montclair the following proposal under our On-Call Traffic Engineering Services agreement with the City. Our proposal is to provide professional engineering design services to perform traffic signal improvements along the Holt Boulevard corridor between Amherst Avenue and Benson Avenue. It is important to note that AGA previously worked on the design of a traffic signal modification plan at the intersection of Holt Boulevard and Amherst Avenue which included new communications conduit on Holt Boulevard between Amherst Avenue and Ramona Avenue. Additionally, AGA prepared Montclair's Citywide Traffic Signal Communications Master Plan identifying proposed routing of new fiber optic infrastructure and has provided on-call services to the City of Montclair for over two decades. AGA's extensive knowledge of the City's traffic signal system will allow AGA to "hit the ground running" on this important project.

AGA staff has also developed excellent relationships with both Engineering and Information Technology staff at the City plus we have an in-depth understanding of the City's communications system and the QuicNet traffic signal system. The AGA Team will leverage the experience gained via previous projects in the City and our personal relationships to complete Phases II and III of the Citywide Fiber Optic Communications project in a timely and efficient manner.

Based on this wealth of experience, and having worked in the City of Montclair for over two decades and completing similar projects, the AGA Team has developed a unique project approach to streamline design and field implementation in the most efficient and cost-effective manner possible. Our goal is to provide the City with a smooth and seamless project experience from the initial project kick-off meeting through implementation and into the operations phase. Furthermore, any one of our key project team members can be on-site and accessible to City staff with a quick phone call.



Integration of these systems requires extensive knowledge and expertise of the systems. AGA staff has in-depth knowledge and experience in integrating and maintaining/supporting the City of Montclair's traffic signal system.

AGA staff experience in integrating the central system hardware (computer servers, workstations, Ethernet switches, modems, port servers, and fiber optic equipment components) with field elements including interfacing with traffic signal system vendors, communication systems specialists and City's Information Technology staff will be key to project success. Additionally, due to our on-going signal system monitoring projects in the City and with various agencies, AGA is fully knowledgeable of each of the systems' complexities and key interrelationships of hardware, software, and people.

### **SCOPE OF WORK**

#### **Task 1: Project Management**

Team meetings will be held as required. As Project Managers, Mr. Ignacio Sanchez and Mr. Ruben Perales will arrange/chair all formal meetings that are included as part of the project scope of work. They will be responsible for adherence to the project schedule for maintaining quality control of all project work products. In short, they will do everything necessary to ensure that the project is completed on time, within budget, and in a manner that fulfills all the goals and objectives of the City of Montclair. Additionally, they will fully leverage AGA's Project Administrative team experience in managing the Project, including project budget control and invoicing, tracking of project schedule, regular project updates and progress reports, agency comment dispositions and document control and filing.

It is anticipated that all design efforts, including City review of preliminary plans, specifications and cost estimates, and providing final plans, specifications and cost estimates, can be completed within ten months of receipt of notice to proceed. Upon receipt of the actual Notice to Proceed, and prior to the project Kick-Off Meeting, AGA will prepare a detailed project schedule that includes actual start dates, activity durations, product submittal dates, etc., including City review times. Agendas and minutes will be prepared for all meetings and provided to all meeting attendees. In addition to the Kick-Off Meeting, subsequent meetings will be held as necessary. It is anticipated that meetings would be held monthly or bimonthly during the design phases of the project.

## **Task 2: Intersection Level-of-Service Analysis and Traffic Signal Timing**

### **Intersection Level-of-Service**

AGA will perform Level of Service (LOS) analysis utilizing the Highway Capacity Manual (HCM) methodology at six (6) signalized intersections along the project corridor to identify feasible modifications that may be included to improve traffic operations along the project corridor. Feasible improvements of the traffic signal operations include lane configuration modifications, adjustment to left turn lane queue storage lengths, adding protected/permissive left turn phasing (at minor streets) or converting to fully protected left turn phasing, removal of crosswalk, split phase signal operation including pedestrian shared phase, addition of right-turn overlap phasing and re-servicing of certain phases. Turning movement counts will be conducted at each project intersection along with Average Daily Traffic (ADT) counts for use in conducting the LOS analysis.

AGA will field review the existing queue lengths and evaluate if any through traffic blocks access to the left/right turn lane. AGA will then assess if a turn bay/pocket will need to be lengthened or if it can be shortened.

AGA will also recommend (if needed) any safety measures that can be quickly implemented. Such measures include: Leading Pedestrian Interval (LPI) at school intersections and/or at heavy pedestrian crossings, additional vehicle head indications, yellow-reflective vehicle head backplates, continental crosswalks and countdown pedestrian indications.

### **Traffic Signal Timing**

#### **Subtask: Coordination Signal Timing**

Under this task, AGA will prepare coordination signal timing plans for weekday AM/Midday/PM and weekend Midday time periods for the corridor. The coordination signal timing will be developed, implemented, and fine-tuned to facilitate the movement of traffic on the Holt Boulevard corridor. AGA will assess the traffic conditions and if new cycle lengths are required, AGA will develop new signal timing coordination plans for the entire length of Holt Boulevard in the City of Montclair. New traffic signal coordination timing sheets will be provided to the City for review and approval prior to implementation.

#### **Subtask: Convert Existing Timing Charts**

AGA will convert existing McCain 200/233 signal timing charts to timing charts specific to the new controller units to be installed at the project intersections. This task will involve the translation of signal timing parameters including, but not limited to, phase sequencing, time-of-day plans, detector settings, special functions, and other such operational details from the existing McCain 200/233 format timing charts to the new controller format. This task will also involve the conversion of the force-offs

used in the McCain 200/233 control environment to phase splits for use in the new controller. AGA engineers will perform this conversion process on each of the timing charts for all project intersections. The City has considered upgrading the McCain QuicNet central system to McCain Transparency. If the City chooses to upgrade to the McCain Transparency system, then the Omni-eX traffic signal controller will need to be incorporated in this project.

### **Task 3: Traffic Signal Modification Plans and Fiber Optic Communication Plans**

#### **Traffic Signal Modification Plans**

Traffic Signal Modification Plans will be prepared for each signalized intersection along the Holt Boulevard corridor listed below. As previously mentioned, the intersection of Holt Boulevard at Amherst Avenue was recently modified and is not expected to receive additional modifications. The extent of the traffic signal modification plan will be based on the street improvement plans prepared by City of Montclair's civil engineering consultant and recommendations based on the LOS analysis performed under Task 2. Each traffic signal modification plan will be prepared per the latest City of Montclair, Caltrans, and CA MUTCD standards and specifications.

- Holt Boulevard at Ramona Avenue
- Holt Boulevard at Monte Vista Avenue
- Holt Boulevard at Central Avenue
- Holt Boulevard at Vernon Avenue
- Holt Boulevard at Benson Avenue

At a minimum, traffic signalized intersection modifications will require the upgrade of existing pedestrian heads to countdown pedestrian heads, and all pedestrian push buttons to meet current ADA standards. New loops, and/or new video detection systems will be reviewed and considered for possible installation. New signal poles may be needed or existing poles may need to be relocated to provide appropriate ADA clearance, or for pedestrian push buttons to be within acceptable distances to crosswalks. Pull box locations will also be reviewed for locations within the curb ramp areas. They will be relocated if possible or AGA will collaborate with the City's civil engineering consultant to develop a suitable arrangement for incorporation of the curb ramp requirements (including truncated domes) around the pull boxes. In addition, these traffic signal modification plans will include the removal of all red-light camera poles that are no longer being used. Underground utility information will be obtained from the street improvements plans.

#### **Fiber Optic Communication Plans**

AGA will prepare a 40 scale Fiber Optic Communications Plan for Holt Boulevard from Amherst Avenue to Benson Avenue. AGA will conduct a field review to identify proposed routing of new 4" fiber optic communication conduit as well as proposed locations of communication pull boxes, splice vaults,

communication hubs, etc. As mentioned earlier, AGA will make use of the interconnect conduit along Holt Boulevard between Amherst Avenue and Ramona Avenue which was previously installed. The final Fiber Optic Communication Plans will show all conduit, pull boxes, cable, Ethernet switches and other pertinent details to connect the new fiber optic cable to the existing/modified traffic signal controller assemblies for a complete and operational traffic signal system. All fiber optic components will be designed per the latest City of Montclair, Caltrans, and CA MUTCD standards. As part of the Fiber Optic Communication Plans, a detailed Fiber Assignments Details sheet will be included to document all fiber connections and splices along the Holt Boulevard corridor. Based on the final approved plan, AGA will develop project special provisions and an itemized construction cost estimate for all required improvements.

**Task 4: Construction Engineering Support**

As part of this task, AGA will provide construction engineering support during construction of the proposed improvements to include the following:

- Review and provide responses to prospective bidder's questions related to traffic signal modification plan during bid process.
- After award of construction, attend pre-construction meeting to address any traffic signal improvement related items.
- Assist in reviewing and providing recommendations on traffic signal equipment and fiber optic communication equipment submittals from Contractor.
- Review and provide recommendations on any Request for Information (RFIs) or Contract Change Orders (CCOs) from Contractor during construction of the traffic signal improvements.
- Prepare final as-built plans based on Contractor's redlines from the field.

**Task 5: System Integration**

AGA will provide overall system integration which includes coordination with the construction contractor responsible for installing new signal controllers and cabinets, communication hardware (cables, switches, Ethernet radios, etc.), CCTV cameras, etc. AGA will work hand in hand with the contractor in configuring all IP devices installed as part of the project. Connectivity from the Traffic Management Center to all IP devices in the field will be verified and documented. AGA will also be present at the time of controller change-outs and/or cabinet assembly installations to verify all controller programming and intersection operations. Any changes made to network parameters (VLAN'S, IP addressing), if any, will be documented in the as-built plans.

Ms. Monica Heredia, P.E.  
July 29, 2022  
Page 6 of 6

**SCHEDULE AND FEE**

AGA is prepared to commence work on the Holt Boulevard traffic signal improvements immediately upon receipt of a written notice to proceed. It is anticipated that a first submittal may be prepared and submitted to the City within 16-20 weeks from notice to proceed and receipt of any street improvement plans prepared by City of Montclair’s civil engineering consultant.

The following is a cost breakdown for each of the tasks identified in the above scope of work.

<b>Work Element</b>	<b>Description</b>	<b>Cost</b>
Task 1	Project Management	\$12,880
Task 2	Intersection Level-of-Service Analysis and Traffic Signal Timing	\$31,500
Task 3	Traffic Signal Modification Plans and Fiber Optic Communication Plans	\$74,950
Task 4	Construction Engineering Support	\$10,400
Task 5	System Integration	\$23,010
<b>Total:</b>		<b>\$152,740</b>

Should you have any questions regarding this proposal, please feel free to contact me at (714) 992-4592. We look forward to working with you on this important project.

Respectfully Submitted,

AGA Engineers, Inc.

**Chalap K. Sadam, P.E., T.E.**  
*President*

*AGA Engineers, Inc., Montclair Proposal - Holt Blvd Improvements\_7\_28\_2022.docx*





**AGREEMENT NO. 22-86  
WITH MONTCLAIR LITTLE LEAGUE  
FOR USE OF SARATOGA PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has baseball fields in Saratoga Park (two northern and two southern fields) generally located at the southwest corner of Vernon Avenue and Kingsley Street, Montclair, California, and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Little League baseball (including the Challenger Division for children with disabilities) conditioning at such times and hours set forth in Section 1(aa). The term of this Agreement is for September 1, 2022 through December 31, 2022.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.

- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to sublet the field.
- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account.
- i. Not to allow hitting balls into the chain link fences for batting practice.
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. To provide a special parking area for participants in the Challenger Division, at the times of their games, by cordoning off the southeast portion of the parking lot; to provide the equipment and personnel needed to set up the special parking area; to see that all equipment is removed and properly stored after each use; to provide personnel to monitor the cordoned off area during its use.
- l. CITY to maintain restroom facilities and CITY to furnish all supplies for each well-maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- m. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- n. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each



barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

- o. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- p. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- q. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- r. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandal-ism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Department at 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- s. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- t. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- u. To provide the CITY representative with a list of the Board of Directors, including names, addresses, and telephone numbers.

- v. To provide CITY with participant rosters, practice and game schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms upon request.
- w. To provide CITY with financial statements upon request for audit purposes.
- x. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- y. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency, of which LEAGUE had knowledge.
- aa. It is agreed that LEAGUE may use said baseball fields from September 1, 2022, through December 31, 2022, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays, generally commencing at 8:00 a.m. No games or activities will be conducted past 9:45 p.m.
- bb. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept, in full force and effect, for the mutual benefit of CITY and LEAGUE, comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence, and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and non contributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice, in writing, by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them or certificate(s) evidencing the insurance.
- cc. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- dd. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any

person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.

- ee. To conduct all operations in compliance with the Americans with Disabilities Act.
- ff. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings. In the event a room reservation is not able to be made due to unforeseen circumstances the League will be responsible to find other accommodations.
- gg. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3 feet by 5 feet. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2 inches. The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc., and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- hh. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- ii. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.

- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.
- h. To provide alarm service at no charge to LEAGUE.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**LEAGUE:**

**CITY:**

**MONTCLAIR LITTLE LEAGUE**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

\_\_\_\_\_  
Javier John Dutrey  
Mayor

\_\_\_\_\_  
Secretary

**ATTEST:**

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

**CITY OF MONTCLAIR  
CONTACT LIST FOR SPORTS LEAGUES  
SEPTEMBER 2022**

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City's Sports League Liaison	Fernando Saltos	(909) 625-9496
<b>Building Maintenance</b>	Pub. Works Facilities/Maint. Asst. Manager	Mathew Paradis	(909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Public Works Operations Asst. Manager	Alex Cardona	(909) 625-9467 Cell: (909) 762-1372
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429

**AGREEMENT NO. 22-87  
WITH MONTCLAIR LITTLE LEAGUE  
FOR USE OF KINGSLEY PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Montclair Little League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has a baseball field generally located at the northwest end of Kingsley Elementary School at Benson Avenue and Kingsley Street, Montclair, California, and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for Junior/Senior Little League baseball conditioning at such times and hours set forth in Section 1(y). The term of this Agreement is for September 1, 2022 through December 31, 2022.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.

- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to sublet the field.
- d. Not to make any improvements or alterations on said premises.
- e. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- f. Not to erect any barriers or fences of any kind unless approved by CITY.
- g. Not to use herbicides at the park for any purpose.
- h. Not to disconnect or make changes to existing phone line account.
- i. Not to allow hitting balls into the chain link fences for batting practice.
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. CITY to maintain restroom facilities and CITY to furnish all supplies for each well- maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

- n. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, meeting areas, towers, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snack bar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- p. To follow proper call-out procedures in an emergency (an urgent need for assistance or some type of immediate action) by using only telephone numbers issued for this purpose. A Contact List containing the emergency telephone numbers is attached.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Department at 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- r. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- s. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
- u. To provide CITY with participant rosters, and conditioning schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms upon request.



- v. To provide CITY with financial statements upon request for audit purposes.
- w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- x. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which LEAGUE had knowledge.
- y. It is agreed that LEAGUE may use said baseball fields from September 1, 2022, through December 31, 2022, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.
- z. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them, or certificate(s) evidencing the insurance.
- aa. INDEMNIFICATION: LEAGUE shall defend, indemnify, and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages to the maximum extent permitted by law.
- bb. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- cc. To conduct all operations in compliance with the Americans with Disabilities Act.

- dd. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings. In the event a room reservation is not able to be made due to unforeseen circumstances the League will be responsible to find other accommodations.
- ee. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- ff. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- gg. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.
- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.

- e. To provide to LEAGUE, inventory list of equipment in snack bar and meeting areas; to provide inspection of those areas and equipment at the end of the agreement period.
- f. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- g. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.
- h. To provide alarm service at no charge to LEAGUE.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**LEAGUE:**

**CITY:**

**MONTCLAIR LITTLE LEAGUE**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

\_\_\_\_\_  
Javier John Dutrey  
Mayor

\_\_\_\_\_  
Secretary

**ATTEST:**

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

**CITY OF MONTCLAIR  
CONTACT LIST FOR SPORTS LEAGUES  
SEPTEMBER 2022**

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City's Sports League Liaison	Fernando Saltos	(909) 625-9496
<b>Building Maintenance</b>	Pub. Works Facilities/Maint. Asst. Manager	Mathew Paradis	(909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Public Works Operations Asst. Manager	Alex Cardona	(909) 625-9467 Cell: (909) 762-1372
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429

**AGREEMENT NO. 22-88  
WITH MONTCLAIR GOLDEN GIRLS SOFTBALL LEAGUE  
FOR USE OF VERNON PARK**

**THIS AGREEMENT** is made and entered into by and between the City of Montclair, hereinafter called "CITY," and Golden Girls Softball League, hereinafter called "LEAGUE." This Agreement is contingent upon the LEAGUE fulfilling its prior contract's financial obligations and paying any and all outstanding invoices owed to the CITY. Use of any and all facilities listed herein may not be used until all fees have been paid.

LEAGUE must follow at all times the most current and updated safety measures outlined below for Moderate-Contact Sports due to COVID-19 as outlined by the State of California-Health and Human Services Agency, California Department of Public Health.

The following guidance is mandatory:

- Informed Consent (City waiver and League waiver)
- Safety Plan

The following general guidance are strongly encouraged:

- Face Coverings
- Physical Distancing
- Hygiene and Sanitation
- Limitations on mixing by participants
- Travel Considerations

**WITNESSETH:**

**WHEREAS**, CITY presently has softball fields (the east and west fields) generally located at the southeast corner of the Vernon Junior High School complex, south of the corner of Benson Avenue and San Bernardino Street, Montclair, California; and

**WHEREAS**, said Park has been developed to provide areas for youth sports, on which premises LEAGUE desires to use for girls softball conditioning at such times and hours set forth in Section 1(y). The term of this Agreement is for September 1, 2022 through December 31, 2022.

**SECTION 1:** LEAGUE hereby agrees as follows:

- a. Provide CITY a list of all your participants and coaches. All must sign CITY approved waiver and submit to CITY liaison prior to participating.

- b. Not to use the premises for any other purpose, except as above indicated.
- c. Not to permit practice sessions in the southeast quadrant of the field; to provide specific written notice to each coach and, in turn, obtain written confirmation from each coach.
- d. Not to sublet the field.
- e. Not to make any improvements or alterations on said premises.
- f. Not to charge for parking of vehicles in the parking lots located within CITY facilities and not to park in the fields or walkways.
- g. Not to erect any barriers or fences of any kind unless approved by CITY.
- h. Not to use herbicides at the park for any purpose.
- i. Not to disconnect or make changes to existing phone line account
- j. To provide the CITY with a written list of all items to be stored in park buildings. No items should be stored in rest room facilities, except rest room supplies. Any items found to be stored in buildings without prior written authorization from the CITY will be removed by city crews with or without prior notice to LEAGUE. Any cost incurred by the CITY by removing, storing, or disposal of said property shall be the responsibility of LEAGUE.
- k. CITY to maintain restroom facilities and CITY to furnish all supplies for each well-maintained restroom. LEAGUE to police the entire premises after each day's use and pick up all paper, trash, and other debris that may have accumulated, and leave the premises in a condition deemed acceptable to CITY. This work shall be completed within two hours after an activity has ended. If the premises are not maintained as stated a contracted cleaning agency will be hired by the CITY and the LEAGUE will be responsible for all fees related to the service.
- l. To maintain all equipment and appliances within the snack bar and snack bar building at all times. To clean all sinks, grills, screens, exhaust hoods, mop all floors and clean countertops and utensils after each day's use and leave the snack bar in a condition deemed acceptable to CITY. The snack bar area should not be used for storage of any materials not pertaining to food items used for snack bar operations.
- m. To ensure when a barbecue is used (a permit is required to be obtained by Department of Public Health), it is set up a minimum of ten feet away from any structure and LEAGUE must provide one fire extinguisher for each barbecue being used. All safety and health regulations set forth by the County of San Bernardino Department of Public Health must be followed. LEAGUE must also ensure that a drip pan be used and ensure barbecue has completely cooled down before returning to storage in any CITY structure.

- n. To deposit, with the CITY representative, the sum of Three Hundred Dollars (\$300) as a refundable cleaning deposit to ensure the proper care and cleanup of the snack bar, restrooms, and equipment therein. At the end of the playing season, an inspection shall be conducted by CITY and LEAGUE representatives to ensure that all areas and CITY-owned equipment have been properly cared for, maintained and cleaned. All non-CITY-owned equipment, with exception of refrigerators, freezers, and ice machines shall be removed from snack bar areas. Refrigerators, freezers, and ice machines owned by LEAGUE shall be cleaned out, doors left open, and electrical turned off. Any food items left in the refrigerators and/or freezers will be discarded by the CITY. Ice machines owned by CITY shall be cleaned out, serviced, and maintained by CITY.
- o. To conform to all safety and health regulations set forth by the County of San Bernardino Department of Public Health and register your snackbar as Pre-packaged. Maintain all CITY-installed facilities and equipment in their original condition. Failure to comply with these requirements will result in a breach of this Agreement and the loss of the use of the premises.
- p. To be responsible for all costs as a result of lost or stolen keys.
- q. LEAGUE agrees to assist CITY in keeping order in the park area and to provide responsible supervision as may be necessary to prevent vandalism or malicious mischief to the property including for graffiti removal on buildings within 24 hours of notification, contact Graffiti Abatement Hotline at 625-9429 and report vandalism immediately to the Public Works Department at 625-9480. LEAGUE will not attempt to remove Graffiti or make repairs to building. LEAGUE shall furnish and supply personnel to conduct and supervise LEAGUE activities on the premises.
- r. If LEAGUE elects to use lights for activities conducted after dark, the CITY will provide electrical services associated with lights at no charge to the LEAGUE.
- s. To deposit, with the CITY representative, the sum of Five Hundred Dollars (\$500) as a security deposit, to ensure the proper and prompt payment of any incurred damages to facilities associated with the LEAGUE. In the event all potential damages are paid by the end of this Agreement term, the deposit will be refunded.
- t. To provide the CITY representative with a list of the Board of Directors including names, addresses, and telephone numbers.
- u. To provide CITY with participant rosters, and conditioning schedules. Also, sixty percent of league participants must live in Montclair and provide verification such as registration forms upon request.
- v. To provide CITY with financial statements upon request for audit purposes.

- w. To designate one individual as the LEAGUE's representative to work with the CITY's representative.
- x. This Agreement is subject to the terms and conditions of any master lease CITY may have with another public agency of which LEAGUE had knowledge.
- y. It is agreed that LEAGUE may use said baseball fields from September 1, 2022, through December 31, 2022, Mondays through Fridays generally commencing at 4:00 p.m. and Saturdays generally commencing at 8:00 a.m.. No games or activities will be conducted past 9:45 p.m.
- z. PUBLIC LIABILITY AND PROPERTY DAMAGE: Throughout the term of this Agreement, at LEAGUE's sole cost and expense, LEAGUE shall keep, or cause to be kept in full force and effect for the mutual benefit of CITY and LEAGUE comprehensive, broad form, general public liability insurance against claims and liabilities for personal injury, death, or property providing proof of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person or for any one accident or occurrence and at least Three Hundred Thousand Dollars (\$300,000) for property damage. All insurance required by this Agreement shall be carried only by responsible insurance companies duly admitted to transact business in the State of California and shall name as additional insured the CITY, its elected officials, officers, employees, and agents. All policies shall contain language, to the extent obtainable, to the effect that (1) the insurer and the insured waive the right of subrogation against CITY and CITY's elected officials, officers, employees, and agents; (2) the policies are primary and noncontributing with any insurance that may be carried by CITY; and (3) they cannot be canceled or materially changed except after thirty (30) days' notice in writing by the insurer to CITY by certified mail. LEAGUE shall furnish CITY with copies of such policies promptly upon receipt of them, or certificate(s) evidencing the insurance.
- aa. INDEMNIFICATION: LEAGUE shall defend, indemnify and save harmless CITY, its elected and appointed officials, officers, agents, and employees from all liability from loss, damage, or injury to persons or property including the payment by LEAGUE of any and all legal costs and attorneys' fees in any manner arising out of any negligent or intentional or willful acts or omissions of the LEAGUE in the activities, use, or occupancy of the PREMISES including, but not limited to, all consequential damages, to the maximum extent permitted by law.
- bb. It is understood and agreed that there is no relationship of employer-employee for Workers' Compensation purposes between CITY and any person connected with the LEAGUE, unless such person is otherwise regularly employed by and conducting official business of CITY.
- cc. To conduct all operations in compliance with the Americans with Disabilities Act.



- dd. LEAGUE shall provide CITY with at least two (2) weeks' notice for room reservations for use of CITY facilities for LEAGUE meetings. In the event a room reservation is not able to be made due to unforeseen circumstances the League will be responsible to find other accommodations.
- ee. LEAGUE may place banners up on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Banners are not allowed to stay up on Sundays. Banners must be no greater than 3'X 5'. Banners will be attached to outfield chain link fence using clip on rings. Banner clearance from turf is a minimum of 2". The City will determine if a banner is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said banner. The CITY has the right to remove and dispose of any banner that is not displayed following the above mentioned procedures.
- ff. LEAGUE may place shade cloth as necessary to dug outs on weekdays and Saturdays, but they must be removed by the close of Saturday each week. Shade cloth is not allowed to stay up on Sundays. Shade cloth must be no greater than what may be required to provide adequate coverage over dug outs. Shade cloth will be attached to dug out structure using clip on rings. The City will determine if a shade cloth is past its useful life due to sun fade, rips, graffiti, etc. and will notify LEAGUE of said issue. LEAGUE will have 24 hours to remove said shade cloth. The CITY has the right to remove and dispose of any shade cloth that is not displayed following the above mentioned procedures. If LEAGUE does not remove or replace shade cloth as requested by CITY within 24 hours, CITY may prohibit use of fields and snack bar facilities to LEAGUE until request has been met.
- gg. Locks are issued by the City to secure areas of the park and have access to those areas such as snack bar shutters for maintenance. If locks are needed to replace a lost or damaged lock contact the City immediately. The League at no time shall use personal locks to secure any area. If a personal lock is found the League will be notified and will have 24 hours to remove it. If not removed the City will remove it by any means necessary and the City will not be held responsible for the League's lock.

**SECTION 2:** CITY hereby agrees as follows:

- a. To maintain the periphery of the premises, including shrubs and trees, and mow all grass on a year-round basis.
- b. To pay for all water used on premises.
- c. To have full control over watering the entire premises. LEAGUE shall not adjust or readjust or otherwise change the sprinkler system or water control facilities.

- d. To provide emergency call-out telephone numbers for use by LEAGUE. A Contact List containing the emergency telephone numbers is attached.
- e. Upon approval of the Director of Human Services, LEAGUE's cleaning deposit shall rollover any unused monies into the next Agreement.
- f. To designate a CITY representative to work with LEAGUE on all non-maintenance issues relating to the use of CITY facilities.

**NOW, THEREFORE,** if any terms of this Agreement are not complied with, the Agreement will become null and void and the LEAGUE will be refused use of CITY facilities. 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 LEAGUE at least ten (10) days prior written notice.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**LEAGUE:**

**CITY:**

**GOLDEN GIRLS SOFTBALL**

**CITY OF MONTCLAIR**

\_\_\_\_\_  
President

\_\_\_\_\_  
Javier John Dutrey  
Mayor

\_\_\_\_\_  
Secretary

**ATTEST:**

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

**CITY OF MONTCLAIR  
CONTACT LIST FOR SPORTS LEAGUES  
SEPTEMBER 2022**

<b>Reason for Contact</b>	<b>Authority</b>	<b>Contact</b>	<b>Telephone Number</b>
<b>After-Hours/ Emergency</b>	Montclair Police Department	Dispatch	(909) 621-4771 9-1-1 (Emergency)
<b>Sports League Administration</b>	City's Sports League Liaison	Fernando Saltos	(909) 625-9496
<b>Building Maintenance</b>	Pub. Works Facilities/Maint. Asst. Manager	Mathew Paradis	(909) 625-9443 Cell: (909) 721-1860
<b>Grounds Maintenance</b>	Public Works Operations Asst. Manager	Alex Cardona	(909) 625-9467 Cell: (909) 762-1372
<b>Vandalism</b>	Public Works Department		(909) 625-9480
<b>Graffiti Removal</b>	Graffiti Abatement Hotline		(909) 625-9429



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	PDT175
<b>SECTION:</b>	CONSENT - AGREEMENTS	<b>DEPT.:</b>	POLICE
<b>ITEM NO.:</b>	3	<b>PREPARER:</b>	M. BUTLER

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-89 WITH SAN BERNARDINO COUNTY FOR ACCESS TO THE SHERIFF'S AUTOMATED SYSTEMS, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING EXECUTIVE DIRECTOR OF PUBLIC SAFETY/POLICE CHIEF ROBERT AVELS TO SIGN AGREEMENT NO. 22-89

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**REASON FOR CONSIDERATION:** To access criminal offender record information and other criminal justice information, the City Council is requested to consider approval of Agreement No. 22-89 with San Bernardino County for access to the San Bernardino County Sheriff's Department Automated Systems.

A copy of proposed Agreement No. 22-89 is attached for the City Council's review and consideration.

**BACKGROUND:** The County of San Bernardino, through the Sheriff's Department, has served as the California Law Enforcement Telecommunications System (CLETS) administrator for many years. As such, the Sheriff's Department has facilitated the exchange of criminal offender record information and other criminal justice information between the Montclair Police Department and statewide criminal justice agencies, as well as nationwide and in Canada, via the National Law Enforcement Telecommunications System (NLETS). In addition, the Sheriff's Department facilitates the interchange of computerized criminal history data between several agencies and databases, including the Federal Bureau of Investigation (FBI); National Crime Information Center (NCIC); California Department of Justice, Racial and Identity Profiling Act (RIPA) System; California Sex and Arson Registry (CSAR); and the Department of Motor Vehicles (DMV).

The City entered into Agreement No. 14-41 for continued access to the Sheriff's Automated Systems, which expired on June 30, 2017. Due to an oversight, this agreement was not renewed; however, the County has continued to provide the Montclair Police Department with these services, and the City has continued to pay the annual maintenance and support costs for these services. The contract term of proposed Agreement No. 22-89 would be July 1, 2022, to June 30, 2027.

Access to the Sheriff's Automated Systems is provided via connection to the County's Wide Area Network (WAN), which is covered under a separate agreement.

**FISCAL IMPACT:** Annual maintenance and support costs for access to the Sheriff's Automated Systems for Fiscal Year 2022-23 would be \$1,203, which is included in the Information Technology Services Budget in Account No. 1001-4203-52450-400-00000. Additionally, the City would be billed transaction fees resulting from using the Sheriff's Department Jail Management System (JIMS), Sheriff's Central Name Index (CNI), and Sheriff's Automated Warrants (SAW). The City would also be billed at a rate of six cents per transaction in the Property Evidence Tracking System (PETS), which would be included with the quarterly bills for CLETS. These rates only apply to Fiscal Year 2022-

23 and would be adjusted each fiscal year through June 30, 2027.

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

1. Approve Agreement No. 22-89 with San Bernardino County for access to the Sheriff's Automated Systems, subject to any revisions deemed necessary by the City Attorney.
2. Authorize Executive Director of Public Safety/Police Chief Robert Avels to sign Agreement No. 22-89.

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



**Contract Number**  
SHR – 22 - 0026

**SAP Number**  
N/A

## Sheriff/Coroner/Public Administrator

<b>Department Contract Representative</b>	Kelly Welty, Chief Deputy Director of Sheriff's Administration
<b>Telephone Number</b>	(909) 387-0640
<b>Contractor</b>	City of Montclair Police Department
<b>Contractor Representative</b>	
<b>Telephone Number</b>	(909)448-3600
<b>Contract Term</b>	07/01/2022 to 06/30/2027
<b>Original Contract Amount</b>	\$1,203 for fiscal year 2022-23
<b>Amendment Amount</b>	
<b>Total Contract Amount</b>	
<b>Cost Center</b>	4430001000

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, the County through the Sheriff/Coroner/Public Administrator (hereinafter referred to as "Sheriff") provides access to the Sheriff's Automated Systems; **AND**

**WHEREAS**, the Contractor desires to enter into an Agreement for access to the Sheriff's Automated Systems; **AND**

**NOW, THEREFORE**, the parties agree as follows:

**A. PURPOSE OF AGREEMENT**

**A.1** This Agreement provides for the Sheriff, acting as the administrator of the California Law Enforcement Telecommunications System (CLETS), to serve as the agent responsible for exchange of criminal offender record information and other criminal justice information between Contractor and the Sheriff and statewide criminal justice agencies. In addition, it provides for the Sheriff to facilitate the interchange of computerized criminal history data between the following agencies and databases:

- A.1.1** Federal Bureau of Investigation (FBI)
- A.1.2** National Crime Information Center (NCIC)

- A.1.3 National Law Enforcement Telecommunications System (NLETS)
- A.1.4 California Department of Justice, Racial & Identity Profiling Act (RIPA) System
- A.1.5 Stop Data Collection System (Staging)
- A.1.6 Stop Data Collection System (Production)
- A.1.7 California Gang System (CalGang)
- A.1.8 California Sex and Arson Registry (CSAR)
- A.1.9 Sentencing, Monitoring, Apprehending, Registering & Tracking (SMART) Justice System
- A.1.10 Department of Motor Vehicles (DMV)
- A.1.11 California Law Enforcement Telecommunications System (CLETS), received via the State CLETS network **(transaction fees apply and billed by Sheriff)**
- A.1.12 Super Name Search network **(transaction fees apply and billed by Sheriff)**
- A.1.13 Crime Web/Mugshot System
- A.1.14 Identix-Cal ID
- A.1.15 Property Evidence Tracking System (PETS) **(transaction fees apply and billed by Sheriff)**
- A.1.16 Sheriff's Department Jail Information Management System (JIMS) **(transaction fees apply and billed by the County's Innovation and Technology Department - ITD)**
- A.1.17 Sheriff's Central Name Index (CNI) **(transaction fees apply and billed by ITD)**
- A.1.18 Sheriff's Automated Warrants (SAW) **(transaction fees apply and billed by ITD)**

A.2 It is the intent of the parties to promote more effective regional law enforcement through the cooperative use and maintenance of the County and Sheriff computerized data files.

A.3 Access to the aforementioned databases requires connection to the County's Wide Area Network (WAN). Contractor will be required to enter into a separate Agreement with the County's Innovation and Technology Department (ITD), for connection to the County's WAN and for payment of costs associated with WAN connectivity.

## B. CONTRACTOR RESPONSIBILITIES

B.1 The Contractor agrees to limit access to information furnished by Sheriff to its own employees and other criminal justice/law enforcement agencies. The Contractor further agrees to comply with Federal and State laws, rules, procedures, and policies formally adopted in the California Law Enforcement Telecommunications System Subscriber Agreement, and in regard to criminal history, information furnished through the FBI/NCIC/CCH (California Criminal History) and the NLETS Program, to rules, procedures and policies approved by the NCIC advisory policy board adopted for NCIC.

B.2 The Contractor agrees to appoint an Automated Terminal Coordinator (ATC) to disseminate CLETS information and updates, to maintain training requirements and paperwork compliancy for all Contractor's personnel. The assigned ATC shall understand the CLETS Policies, Practices and Procedures Manual and comply with all of the Department of Justice guidelines. The ATC shall understand and comply with the Agency ATC Responsibilities guidelines, Exhibit A, attached hereto and incorporated herein by reference. This appointed staff member shall be the point of contact to the Sheriff.

B.3 In accordance with the State CLETS Policies, Practices, and Procedures Manual, and as designated by the State of California and the Sheriff, the Contractor shall be responsible for all security and privacy considerations relating to the use of the Contractor's terminal or terminals.

B.4 The data provided to Sheriff by the Contractor will be relevant to the criminal justice process. The completeness, accuracy, objectivity, and verifiability of information entered into the information system is paramount and the Contractor will cooperate with the regular auditing of the system in accordance with the State CLETS Policies, Practices, and Procedures Manual, to assure reliability of stored data. In addition, the procedures for maintaining and/or purging these records will be adhered to in order to enhance the reliability of all data.

- B.5** The Contractor is responsible to provide an audit trail of all CLETS entries made from all Contractor terminals accessing CLETS information through an established CAD-to-CAD connection.
- B.6** The Contractor agrees to cause employees; having access via the San Bernardino County IBM computer system to the Sheriff's CNI, JIMS or any other Sheriff's Automated Systems, to complete security training before such access will be allowed. Contractor agrees to adhere to all State, County and Federal laws applicable to the confidentiality and the release of information.
- B.7** Each of the Contractor's employees requiring access to CNI must complete and sign a Central Name Index Authorization Statement, Exhibit B, attached hereto and incorporated herein by reference.

## **C. SHERIFF RESPONSIBILITIES**

### **C.1 Access**

Sheriff's assigned Terminal Coordinator will review all applications for connection to the Telecommunications System, as well as requests to modify, move or increase the number of terminals in an existing agency.

### **C.2 Services Provided**

Sheriff agrees to furnish the Contractor access to such criminal offender record information and other criminal justice information as is made available to the State through the CLETS network and provide access to Sheriff's Automated Systems.

### **C.3 Equipment**

The Sheriff shall provide, maintain, operate, and manage equipment for an electronic data communications system in the San Bernardino County Sheriff's Data Center in order to provide the services specified in this Agreement. One or both of the following is required for Contractor to connect with the Sheriff's Message Switch computer:

**C.3.1** A CAD to CAD interface or Terminal Browser Access

**C.3.2** Connection to the County WAN

**(NOTE: This Agreement does not include costs for equipment/services related to a private telecommunications connection. The WAN connection process and associated costs does not include a telecommunications connection at the local site and/or any additional equipment. Contractor shall be responsible for establishing its own telecommunications connection at the local site to the WAN connection.)**

### **C.4 Support**

Sheriff shall render assistance to the Contractor in order to provide for timely, efficient, and accurate implementation of CAD/CLETS/RMS network operations.

**C.5** The Sheriff shall maintain records for auditing purposes on all CLETS entries in accordance with the Department of Justice mandates. **All CAD-to-CAD Contractors will also be responsible for maintaining their CLETS data and providing an audit trail on all Contractor terminals and/or employees accessing CLETS information via the CAD-to-CAD connection.**

**C.6** The Sheriff reserves the right to suspend access to any information provided for in this Agreement, in accordance with the State CLETS Policies, Practices and Procedures Manual, when any rule, policy, or procedure adopted by Sheriff, or approved by the NCIC or law of this county, state, or federal government applicable to the security and privacy of information is violated or appears to be violated by the Contractor.

## **D. CENTRAL NAME INDEX (CNI) ACCESS LIMITATIONS**

Access to the Sheriff's CNI database is also limited, as follows:



- D.1** In the interest of maintaining a regional criminal justice database, Contractor is granted inquiry capability to the Sheriff's CNI database for law enforcement related data. The data accessed in CNI by the Contractor will be relevant to the criminal justice process. The Contractor will cooperate with regular auditing of the system to assure security of stored data.
- D.2** Contractor agrees to require all employees who access CNI to complete and sign a Central Name Index Authorization Statement, a copy of which is attached hereto as Exhibit B and incorporated herein by reference.
- D.3** The Sheriff/Coroner/Public Administrator, or designee, will act as "Controller" facilitating the entry and retrieval of computerized CNI information.

**E. TERM AND TERMINATION**

The term of this Agreement shall be for a period commencing on July 1, 2022, or upon the date of approval by the Sheriff, whichever is later, and ending on June 30, 2027. Notwithstanding the foregoing, this Agreement may be terminated at any time with or without cause by Contractor or by Sheriff upon written notice given to the other party at least thirty (30) days prior to the date specified in the notice for such termination. Any such termination date shall coincide with the end of a calendar month. In the event of such termination, each party shall fully pay and discharge all obligations in favor of the other accruing prior to the date of such termination, and each party shall be released from all obligations or performance which would otherwise accrue subsequent to the date of termination. Neither party shall incur any liability to the other by reason of termination.

**F. FISCAL PROVISIONS**

**F.1 FEES**

- F.1.1** CLETS Teleprocessing Support/Maintenance Costs will be billed by Sheriff.
  - F.1.2** CLETS Terminal Browser Access will be billed by Sheriff.
  - F.1.3** Transaction Fees for Systems listed in No. A.1.11; A.1.12; and A.1.15 indicated in Section A.1 above, will be billed by Sheriff. Access to PETS requires special arrangements that are unique to each agency. Agencies desiring access to PETS shall contact Sheriff's Technical Services at [CNI\\_JIMS@sbcisd.org](mailto:CNI_JIMS@sbcisd.org) to determine if the agency is eligible for access.
  - F.1.4** Systems listed in No. A.1.16 through A.1.18 will be billed by ITD.
  - F.1.4** Connection to the County WAN will be billed by ITD and a one-time fee applies.
  - F.1.5** County WAN Access is provided under a separate agreement with ITD and will be billed by ITD.
- F.2** Contractor shall pay Sheriff the sum of money per Schedule A attached hereto and incorporated herein by reference. Sheriff shall invoice Contractor for the cost of services quarterly in arrears. Payment shall be due within forty-five (45) days from the date of each invoice. Basic installation of service will be provided by the Sheriff. Installation fees, cost of additional services, equipment, related supplies and changes or modifications will be paid for by the Contractor. The total cost to provide, repair or replace machines, printers, and other equipment shall be the responsibility of the Contractor. Time, maintenance and diagnostic costs will be paid by the Contractor. Costs will be adjusted in the event of any level of service changes.
- F.3** Schedule A reflects the rates in effect at the Execution of this Agreement. Sheriff shall have the right to adjust the Agreement rates annually and any subsequent rate change(s) shall become effective on July 1 of the County fiscal year (July 1 through June 30). Such rate change(s) can include changes to Memoranda of Understanding approved by the County Board of Supervisors for County employees, which increase labor costs, and other inflationary costs. Sheriff shall provide notice to Contractor of pending rate change(s) by providing Contractor with a revised Schedule A reflecting such rate change(s).

**G. INDEMNIFICATION AND INSURANCE**

The Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (“Indemnitees”), from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of Indemnitees. The Contractor’s indemnification obligation applies to the County’s “active” as well as “passive” negligence but does not apply to the County’s “sole negligence” or “willful misconduct” within the meaning of Civil Code Section 2782.

Additionally, the Contractor agrees to provide Cyber Liability Insurance, if applicable, through its program of self-insurance or other carriers, with adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this agreement; with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

Contractor shall require the carriers of the above required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the Contractor and Contractor’s employees or agents from waiving the right of subrogation prior to a loss or claim. The Contractor hereby waives all rights of subrogation against the County.

**H. NOTICES**

All written notices and proof of insurance 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 by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

San Bernardino County Sheriff’s Department	City of Montclair
Bureau of Administration, Contracts Unit	Montclair Police Department
655 East Third Street	4870 Arrow Highway
San Bernardino, CA 92415-0061	Montclair, CA 91763-1211
Fax: (909) 387-3444	

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

**I. AUTHORITY**

The Sheriff/Coroner/Public Administrator of San Bernardino County, or designee, shall have the right to exercise the County’s authority under this Agreement including the right to give notice of termination on behalf of the County at his sole discretion.

**J. AGREEMENT AUTHORIZATION**

The Contractor warrants and represents that the individual signing this Agreement is a properly authorized representative of the Contractor and has the full power and authority to enter into this Agreement on the Contractor’s behalf.

**K. ENTIRE AGREEMENT**


This Agreement, including all Exhibits and Schedule, which are 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.

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 mail 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.

**IN WITNESS WHEREOF**, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

City of Montclair Police Department  
*(Print or type name of agency/department)*

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




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

Title \_\_\_\_\_  
*(Print or Type)*

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

Address 4870 Arrow Highway  
Montclair, CA 91763-1211

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
 Richard D. Luczak, Deputy County Counsel		 Kelly Welty, Chief Deputy Director of Sheriff's Administration
Date _____	Date _____	Date _____

**SAN BERNARDINO COUNTY SHERIFF'S DEPARTMENT**

**SCHEDULE 'A'**

**CITY OF MONTCLAIR  
MONTCLAIR POLICE DEPARTMENT**

**FY 2022-23\***

**COST SCHEDULE  
CHARGES FOR SHERIFF'S AUTOMATED SYSTEMS**

**CLETS ANNUAL MAINTENANCE & SUPPORT COSTS: Annual Cost**

Service

CLETS Teleprocessing Support/Maintenance Costs (\$50/Month) \$600

CLETS Terminal Browser Access (\$10.50/Month/Terminal) (OMO001-OMO002): \$252

CLETS Transactions Cost (2021 data) \$351

CLETS ANNUAL MAINTENANCE & SUPPORT COSTS: \$1,203

**QUARTERLY PAYMENT IN ARREARS FOR CLETS: \$301**

**ADDITIONALLY:**

The Contractor shall be billed Transaction Fees on a monthly basis by County ISD in arrears resulting from use of the following systems:

Sheriff's Department Jail Management System (JIMS)

Sheriff's Central Name Index (CNI)

Sheriff's Automated Warrants (SAW)

Property Evidence Tracking System (PETS): The Contractor shall be billed for the system transaction fees at the rate of 6 cents per transaction, billing by SHERIFF on a quarterly basis for actual usage in arrears and included with their quarterly bills for CLETS.

\* The rates on this page are for the fiscal year 2022-23 only and will be adjusted each fiscal year.

## Automated Terminal Coordinator (ATC) Responsibilities

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**San Bernardino County Sheriff's Department**  
**Technical Services Division**  
**CLETS Administration Section**  
**655 East Third Street**  
**San Bernardino, CA 92415-0061**

**Telephone: (909)387-4357**  
**Fax: (909)387-3666**

An Automated Terminal Coordinator (ATC) the key person chosen by his/her respective agency to serve as the coordinator with the San Bernardino County Sheriff's Department (usually the same person who serves as the CLETS Coordinator to the DOJ) on matters pertaining to CLETS contracts with the Sheriff's Department, CAD/RMS connections to the message switch, maintenance of the users database, as well as all other matters pertaining to the use of; CLETS, NCIC, NLETS, and the DOJ criminal justice data bases.

The ATC should be familiar with all aspects of the aforementioned items. The liaison's primary responsibilities include:

### Administration/Record Keeping

- Coordinate and/or respond to CLETS related correspondence.
- Notify the Sheriff's Department of any changes in address, phone number, agency representatives, contracts, CAD/RMS connections, and other information pertaining to your agency.
- On a quarterly basis, ensure the accuracy of CLETS user security files within your agency, deleting/disabling users who are no longer employed. Report this information to the Sheriff's Department coordinator if you have a direct connection using their terminals.
- Ensure Management Control, Interagency Agreements, or Release of CLETS Information Agreements are on file and kept current with the signature of new agency heads, if applicable.
- Maintain a copy of all contractual agreements.

### Policy

- Ensure compliance with CLETS, CJIS, NCIC, and NLETS policies and regulations.
- Ensure CLETS terminals, equipment, and messages are secure from unauthorized access.

### System

- Maintain and have available a current system diagram.
- Maintain and have available a list of all Sheriff's Department CLETS terminal locations within the agency, identifying the location, ORI, and mnemonic assigned to the terminal.
- Coordinate any terminal access level changes, requests for additional CLETS mnemonics, and applications for upgrading service.

### Training

- Advise terminal operators within your agency of the formats used on Sheriff's Department terminals within your agency.
- Determine the need to coordinate CLETS related training.

SHERIFF'S DEPARTMENT SAN BERNARDINO COUNTY  
CENTRAL NAME INDEX / JIMS NET  
AUTHORIZATION STATEMENT

The following information is required to identify personnel for the computerized Central Name Index.

NAME: \_\_\_\_\_  
*Print:* (Last) (First) (Middle)

DOB: \_\_\_\_\_  
(Month) (Day) (Year)

AGENCY/STATION: \_\_\_\_\_

CALIFORNIA DRIVER'S LICENSE: \_\_\_\_\_

LAST 4 OF SOCIAL SECURITY NUMBER: \_\_\_\_\_

EMPLOYEE NUMBER: \_\_\_\_\_

PD# (if applicable): \_\_\_\_\_

\*\*\*SUPERVISOR SIGNATURE: \_\_\_\_\_

THIS PERSON REQUIRES:  INQUIRY ONLY

JUSTIFICATION: \_\_\_\_\_

**STATEMENT:**

1. I have completed the above questionnaire, and the information submitted is accurate to the best of my knowledge.
2. I understand that the Sheriff's Automated Systems are for Law Enforcement use only and are protected by State Law. Accidental or deliberate disclosure of County information, modification, or misuse may result on disciplinary action up to, and including loss of employment and prosecution under applicable laws.
3. Violation of one or more of the following procedural rules may result in disciplinary action.
  - a. The unauthorized use of another individual's name and/or identification information for the purpose of inquiry or entry into one or more of the Sheriff's Automated Systems.
  - b. The unauthorized deletion or altering of any existing data in one or more of the Sheriff's Automated Systems.
  - c. The unauthorized input (or causing of input) of false information to one or more of the Sheriff's Automated Systems.

EMPLOYEE SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

**Authorizing Personnel:**

\_\_\_\_\_  
*Print: LAST, FIRST, TITLE*                      *DEPARTMENT/LOCATION*                      *PHONE #*

*Please scan and e-mail this form to **CNI\_JIMS@sbcasd.org**. You will receive a reply via email when access has been granted*

**IMPORTANT NOTE: It is imperative that you notify us immediately, upon a termination or removal.**



# CITY COUNCIL AGENDA REPORT

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**DATE:** AUGUST 15, 2022                      **FILE I.D.:** HSV046/GRT085  
**SECTION:** CONSENT - AGREEMENTS                      **DEPT.:** HUMAN SVCS.  
**ITEM NO.:** 4                      **PREPARER:** A. COLUNGA

**SUBJECT:** CONSIDER APPROVAL OF AGREEMENT NO. 22-90 WITH THE SAN BERNARDINO COUNTY OFFICE OF HOMELESS SERVICES TO ACCEPT AN AWARD FOR THE HOMELESS HOUSING, ASSISTANCE, AND PREVENTION PROGRAM ROUND 2 (HHAP2), SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING THE CITY MANAGER TO SIGN AGREEMENT NO. 22-90 AND ANY OTHER RELATED DOCUMENTS TO EFFECTUATE RELATED PROGRAMS

---

**REASON FOR CONSIDERATION:** The City Council is requested to consider approval of Agreement No. 22-90 with the San Bernardino County Office of Homeless Services (OHS) to accept an award for the Homeless Housing, Assistance, and Prevention Round 2 (HHAP-2).

A copy of Agreement No. 22-90 is attached for the City Council's review and consideration.

**BACKGROUND:** San Bernardino County has been allocated funds by the State of California, Homeless Coordinating and Financing Council in the Business, Consumer and Housing Agency, under the HHAP-2 Program authorized by AB 83 (Committee on Budget, Chapter 15, Statutes of 2020), which was signed into law by Governor Gavin Newsom on June 29, 2020, to build on regional coordination developed through previous rounds of Homeless Coordinating and Financing Council Homeless Emergency Aid Program (HEAP), HHAP, and COVID-19 funding. OHS is responsible for distributing \$1.3 million in HHAP-2 funding designated for the County. The City of Montclair was successful in our application to receive HHAP-2 funds.

The City's successful application for HHAP-2 funding will be utilized to provide a comprehensive outreach program to provide rental assistance or rapid rehousing and will be implemented by the Code Enforcement Division. Measurable outcomes for the HHAP-2 funded activities include 1) At least 17 individuals will be referred to resources annually, and 2) At least five individuals will be housed annually.

**FISCAL IMPACT:** Should the City Council approve proposed Agreement No. 22-90, OHS will provide the City with funding in the amount of \$41,085 toward eligible expenses from August 23, 2022, to June 30, 2026.

**RECOMMENDATION:**

1. Staff recommends the City Council approve Agreement No. 22-90 with the San Bernardino County Office of Homeless Services to accept an award for the Homeless Housing, Assistance and Prevention Round 2 subject to any revisions deemed necessary by the City Attorney; and
2. Authorize the City Manager to sign Agreement No. 22-90 and any other related documents to effectuate related programs.



**Contract Number**

**SAP Number**

Agreement No. 22-90

## Community Revitalization

<b>Department Contract Representative</b>	Tom Hernandez Chief of Homeless Services
<b>Telephone Number</b>	909-501-0610
<b>Contractor</b>	City of Montclair
<b>Contractor Representative</b>	Alyssa Colunga, Assistant Director of Human Services & Grants Manager
<b>Telephone Number</b>	(909) 625-9459
<b>Contract Term</b>	Effective Date– June 30, 2026
<b>Original Contract Amount</b>	\$41,085
<b>Amendment Amount</b>	N/A
<b>Total Contract Amount</b>	\$41,085
<b>Cost Center</b>	

**IT IS HEREBY AGREED AS FOLLOWS:**

**WHEREAS**, San Bernardino County (COUNTY) has been allocated funds by the State of California, Homeless Coordinating and Financing Council in the Business, Consumer and Housing Agency, hereinafter called State, under the Homeless Housing, Assistance and Prevention Round 2 (HHAP-2) Program authorized by AB 83 (Committee on Budget, Chapter 15, Statutes of 2020), which was signed into law by Governor Gavin Newsom on June 29, 2020, to build on regional coordination developed through previous rounds of Homeless Coordinating and Financing Council Homeless Emergency Aid Program (HEAP), HHAP, and COVID-19 funding; and

**WHEREAS**, the COUNTY Office of Homeless Services, hereinafter referred to as OHS, is the Administrative Entity authorized to act on behalf of the COUNTY to administer HHAP-2 as designated by the San Bernardino County Continuum of Care (SBC CoC), the eligible recipient of HHAP-2 grant funding; and

**WHEREAS**, the COUNTY conducted a competitive process to find City of Montclair (CONTRACTOR) to provide these services, and

**WHEREAS**, CONTRACTOR has the required qualifications, experience and expertise to provide services and is willing to use State funds to serve individuals and families experiencing homelessness; and

**WHEREAS**, the COUNTY desires that such services be provided by CONTRACTOR and CONTRACTOR agrees to perform these services as set forth below;

**NOW, THEREFORE**, the COUNTY and CONTRACTOR mutually agree to the following terms and conditions:



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**ATTACHMENTS**

**EXHIBIT 1 – HHAP-2 AWARD BY CATEGORY**

**EXHIBIT 2 – SCOPE OF WORK**

**EXHIBIT 3 – HHAP-2 REPORTING REQUIREMENTS**

**EXHIBIT 4 – HMIS CLIENT DATA REPORT SAMPLE**

**EXHIBIT 5 – HUD DATA QUALITY REPORT**

**EXHIBIT 6 – CALIFORNIA WELFARE AND INSTITUTIONS CODE SECTION 8255**

**A. DEFINITIONS**

- A.1 Administrative Entity:** A unit of general-purpose local government (city, county or a city that is also a county) or a nonprofit organization that has (1) previously administered federal Department of Housing and Urban Development (HUD) Continuum of Care (CoC) funds as the collaborative applicant pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations, and (2) been designated by the CoC to administer program funds.
- A.2 Bridge Housing:** Temporary housing resources offered while working with clients with Permanent Supportive Housing as the final goal. Case managers, housing locators and employment specialists work with each family to access their unique needs and create a customized plan for achieving long-term stability and independence. Once in permanent housing, families build on their success with aftercare support from program staff and a network of community partners.
- A.3 Case Management:** The coordination of community-based services by a professional team to provide people the quality health care that is customized accordingly to an individual's setbacks or persistent challenges and aid them to their recovery. In addition, it can be defined as a collaborative process that assesses, plans, implements, coordinates, monitors, and evaluates the options and services required to meet the client's health and human service needs.
- A.4 Continuum of Care (CoC):** A group of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within a geographic area to promote community wide commitment to the goal of ending homelessness; rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homes individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.
- A.5 Continuum of Care (CoC) Housing Providers:** A network of Community Based Organizations partnered with the COUNTY to provide services to homeless individuals and families.
- A.6 Coordinated Entry System (CES):** The CES is used to identify, assess and prioritize homeless individuals and families for housing and services based on vulnerability and severity of need. Designed to ensure people experiencing homelessness receive the right housing intervention and prioritize people who need supportive housing the most to be able to access it as quickly as possible.
- A.7 Emergency Aid:** Any urgent and immediate services, which include housing that will be provided to homeless individuals. Broad categories of uses include, but are not limited to, shelters, shelter beds, public toilets, shower facilities, tiny-shed homes, etc.
- A.8 Emergency Shelter:** Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person. No individual or household may be denied emergency shelter because of an inability to pay
- A.9 General Service Area:** The geographically defined area where a service entity provides outreach and direct services to homeless people.
- A.10 Homeless:** The same meaning as defined in Section 578.3 of Title 24 of the Code of Federal Regulations, as that Section read on January 10, 2019.
- A.11 Homeless Management Information System (HMIS):** A web-enabled database used by homeless service providers to capture information about the San Bernardino County persons they serve. The database tracks services provided to homeless individuals and families by the collaborative agencies. Services tracked include: emergency, transitional, and permanent housing bed usage, employment, veteran's status, as well as referrals to health and human service providers, or other relevant supportive service agencies. As required by the U.S. Department of Housing and Urban Development, the Continuum of Care utilizes the captured

information to make informed decisions in planning, homeless advocacy, and policy development that result in targeted services. HMIS also includes the use of a comparable database by a victim services provider or legal services provider that is permitted under Part 576 of Title 24 of the Code of Federal Regulations.

- A.12 Homeless Youth:** An unaccompanied youth between 12 and 24 years of age, inclusive, who is experiencing homelessness, as defined in subsection (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act [42 U.S.C. Sec. 11434a(2)]; includes unaccompanied youth who are pregnant or parenting.
- A.13 Housing First:** An approach to quickly and successfully connect individuals and families experiencing homelessness to permanent housing without preconditions and barriers to entry, such as sobriety, treatment or service participation requirements. Supportive services are offered to maximize housing stability and prevent returns to homelessness as opposed to addressing predetermined treatment goals prior to permanent housing entry
- A.14 Housing Search and Placement:** Services to assist clients to locate, secure, and navigate the rental market. Housing Search and Placement activities may include, but are not limited to, unit identification, unit inspection, determining rent reasonableness, contracts, advocating for households, landlord/tenant mediation, and any other housing requirements.
- A.15 Interagency Council on Homelessness (ICH):** The policy making body for the San Bernardino County Homeless Partnership. ICH works to ensure that the recommendations listed in the County's 10-Year Strategy to End Homelessness are realized. ICH Membership is composed of elected officials, state and local representatives, community and faith-based organizations, and corporate advocates.
- A.16 Instance of Service:** Each encounter with a member of the target population where services are provided for each of the eligible grant activities. For example, one individual checks into a warming center operated by Provider X on Tuesday. The same individual checks into the same warming center the next night. This counts as two instances of service for this activity.
- A.17 Navigation Center:** A Housing First, low barrier, service service-enriched shelter focused on moving homeless individuals and families into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.
- A.18 Office of Homeless Services (OHS):** The lead agency for the San Bernardino County Continuum of Care (SBC CoC). The SBC CoC coordinates services with the San Bernardino County Homeless Partnership consisting of community and faith-based organizations, educational institutions, non-profit organizations, private industry, and Federal, State and local governments.
- A.19 Permanent Supportive Housing (PSH):** Low-barrier permanent housing with services. The type of services depends on the needs of the residents. Services may be short-term, sporadic, or ongoing indefinitely. PSH units are for individuals and families who are homeless or chronically homeless. PSH is housing combined with services, which may include mental health and health services, drug and alcohol treatment, education and job training.
- A.20 Point-In-Time-Count (PITC):** An unduplicated one-night estimates of both sheltered and unsheltered homeless populations conducted by Continuums of Care nationwide on a pre-determined date within the last 10 days of each January pursuant to Section 578.3 of Title 24 of the Code of Federal Regulations.
- A.21 Program:** The Homeless Housing, Assistance and Prevention Round 2 (HHAP-2) Program established pursuant to AB83 (Committee on Budget, Chapter 15, Statutes of 2020) and HHAP-2 are used interchangeably throughout this document.
- A.22 Rapid Re-Housing (RRH):** An intervention designed to help individuals and families quickly exit homelessness and return to permanent housing. Using the Housing First model, move families and individuals into permanent affordable housing as quickly as possible with minimal barriers, assist with move-in costs such as security and utility deposits and short-medium term declining rental subsidies, and provide intensive social services while families or individuals are in their home. Supportive services are designed to enhance each family or individual's stability and equip them with skills and resources they need to sustain and thrive in housing and avoid future homelessness.

- A.23 San Bernardino County Continuum of Care (SBC CoC):** Provides leadership in creating a comprehensive countywide network of service delivery to homeless individuals and families and those at-risk of becoming homeless.
- A.24 State of California, Homeless Coordinating and Financing Council (State):** Created pursuant to Section 8257 of the Welfare and Institutions Code to, among other things, identify mainstream resources, benefits, and services that can be accessed to prevent and end homelessness in California.
- A.25 Subcontractor:** An individual, company, firm, corporation, partnership or other organization, not in the employment of or owned by CONTRACTOR who is performing services on behalf of CONTRACTOR under a separate contract with or on behalf of CONTRACTOR.
- A.26 Target Population:** Any person who is homeless as defined for this grant (see A.10 above).
- A.27 Transitional Housing (TH):** Designed to provide homeless individuals and families with the interim stability and support to successfully move to and maintain permanent housing. TH may be used to cover the costs of up to 24 months of housing with accompanying supportive services.
- A.28 United States Department of Housing and Urban Development (HUD):** A Federal agency established in 1965, HUD's mission is to increase homeownership, support community development, and increase access to affordable housing free from discrimination. To fulfill this mission, HUD will embrace high standards of ethics, management and accountability and forge new partnerships, particularly with faith-based and community organizations, that leverage resources and improve HUD's ability to be effective on the community level.

**B. CONTRACTOR RESPONSIBILITIES**

The following shall be required by CONTRACTOR:

**B.1 General Requirements**

- B.1.1** CONTRACTOR shall be in compliance with all applicable Federal, State, and local laws, required to perform this Contract. CONTRACTOR shall be required to repay the COUNTY in the event of non-compliance with any applicable law if the COUNTY is required to repay any amount of funds to the State as a result of CONTRACTOR's non-compliance.
- B.1.2** CONTRACTOR and its Subcontractors shall perform the work in accordance with Federal, State and local housing and building codes, as applicable.
- B.1.3** CONTRACTOR shall be responsible to accomplish the levels of performance as set forth in Exhibit 1 – HHAP-2 AWARD BY CATEGORY and report such measures quarterly to the COUNTY with each quarterly expenditure report. The COUNTY will review CONTRACTOR performance to assess expenditure and performance progress. If CONTRACTOR is not meeting expenditure and performance measures, the COUNTY will work with CONTRACTOR to identify strategies and remediate performance issues.
- B.1.4** CONTRACTOR's obligation to the COUNTY shall not end until all closeout requirements are completed. Activities during closeout period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent funds, and accounts receivable to the COUNTY), and determining the custodianship of records.

**B.2 Scope of Work**

The project description for services to be provided by CONTRACTOR under this Contract are identified in Exhibit 2 - SCOPE OF WORK.

**B.3 Administrative Requirements**

CONTRACTOR shall adhere to the following:

**B.3.1 Coordinated Entry System (CES)**

- a.** The CES is a referral process that currently coordinates with the SBC CoC. All those participating with CES will need to apply to participate with the Homeless Management Information System (HMIS).

- b. CONTRACTOR must work in collaboration with CES and SBC CoC to ensure the screening, assessment, and referral of HHAP-2 participants are consistent with the eligible uses under HHAP-2.
- c. CONTRACTOR agrees to receive referrals from CES prior to providing services with the exception of individuals receiving emergency assistance. In such cases, immediate services can be provided, but individuals and/or families must be referred by CONTRACTOR to CES for assessment and prioritization within seventy-two (72) hours. CONTRACTOR understands that individuals and/or families may not be referred to CONTRACTOR and may be referred to another service provider based upon the CES assessment.

**B.3.2** Data Reporting

- a. CONTRACTOR will submit to OHS detailed reports containing information listed in Exhibit 3 – HHAP-2 REPORTING REQUIREMENTS.
- b. A report will be due forty-five (45) days after the date of expiration of this Contract or upon completion of Contract services.
- c. CONTRACTOR shall submit additional reports as required by the State or COUNTY.

**B.3.3** Equipment and Other Property

All equipment, materials, supplies or property of any kind (including vehicles, publications, copyrights, etc.) purchased with HHAP-2 funds received under the terms of this Contract which has a life expectancy of one (1) year or more shall be the property of the COUNTY and shall be subject to the provisions of this paragraph. The disposition of equipment or property of any kind shall be determined by the COUNTY when the Contract is terminated. Additional terms are as follows:

- a. The purchase of any furniture or equipment which was not included in CONTRACTOR's approved budget, shall require the prior written approval of the COUNTY, and shall fulfill the provisions of this Contract which are appropriate and directly related to CONTRACTOR's services or activities under the terms of the Contract. The COUNTY may refuse approval for any cost resulting from such items purchased, which are incurred by CONTRACTOR, if prior written approval has not been obtained from the COUNTY.
- b. Before equipment purchases made by CONTRACTOR are approved by the COUNTY, CONTRACTOR must submit paid vendor receipts identifying the purchase price, description of the item, serial numbers, model number and location where equipment will be used during the term of this Contract.
- c. CONTRACTOR shall submit an inventory of equipment purchased under the terms of this Contract as part of the expenditures report for the month in which the equipment is purchased. CONTRACTOR must also maintain an inventory of equipment purchased that, at a minimum, includes the description of the property, serial number or other identification number, title holder, acquisition date, cost of the equipment, location, use and condition of the property, and ultimate disposition data. A physical inventory of the property must be reconciled annually. Equipment should be adequately maintained and a control system in place to prevent loss, damage, or theft. Equipment with cost exceeding COUNTY's capitalization threshold of \$5,000 must be depreciated.
- d. No costs incurred prior to the Contract commencement date shall be eligible for reimbursement with HHAP-2 funds.
- e. Upon termination of this Contract, CONTRACTOR will provide a final inventory to the COUNTY and shall at that time query the COUNTY as to requirements, including the manner and method in returning equipment to the COUNTY. Final disposition of such equipment shall be in accordance with instructions from the COUNTY.

#### **B.3.4 Financial Management**

- a. Review, understanding, and certification that quarterly expenditure reports submitted to the COUNTY meet eligible expenses under HHAP-2 and State requirements. The COUNTY shall have no obligation to advance or pay CONTRACTOR with any funds other than HHAP-2 funds the COUNTY receives from the State.
- b. CONTRACTOR attests that by submitting a quarterly expenditures report to OHS, it has completed all due diligence necessary and verified eligibility for HHAP-2 funding. CONTRACTOR shall be required to repay COUNTY for non-eligible expenditures that may inadvertently be processed by the COUNTY.
- c. Budget Changes – CONTRACTOR agrees that no changes shall be made to CONTRACTOR's HHAP-2 budget without first obtaining approval. No more than the amounts specified in Exhibit 1 – HHAP-2 AWARD BY CATEGORY may be spent for the separate cost categories specified in the budget summary. Any changes to this Contract must be requested by CONTRACTOR in writing through OHS. Changes must be approved by the County and/or the State.
- d. Documentation of Costs and Other Financial Reporting

CONTRACTOR will be required to maintain books, records, documents, and other evidence directly related to the performance of work in accordance with Generally Acceptable Accounting Procedures. Costs shall be supported by properly executed payrolls, time records, invoices, receipts, vouchers or other official documentation, as evidence of the nature and propriety of the charges.

All accounting documents pertaining in whole or in part to this Contract shall be clearly identified and readily accessible, and upon reasonable notice, the COUNTY shall have the right to audit the records of the CONTRACTOR as they relate to the Contract and the activities and services described herein.

CONTRACTOR shall also:

- 1) Maintain an effective system of internal fiscal control and accountability for all HHAP-2 funds and property acquired or improved with HHAP-2 funds, and make sure the same are used solely for authorized purposes.
- 2) Keep a continuing record of all disbursements by date, payment method, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the CONTRACTOR's accounting records.
- 3) Maintain payroll, financial, and expense reimbursement records for a minimum period of five (5) years after the termination of this Contract.
- 4) Permit inspection and audit of its records with respect to all matters authorized by this Contract by representatives of the COUNTY at any time during normal business hours and as often as necessary.
- 5) Inform the COUNTY concerning any funds allocated to CONTRACTOR, that the CONTRACTOR anticipates will not be expended during the term of this Contract.
- 6) Repay the COUNTY any funds in its possession at the time of the termination of this Contract that may be due to the COUNTY; e.g. ineligible costs, unexpended funds, etc.

#### **B.3.5 Funding**

- a. This Contract is valid and enforceable only if sufficient funds are made available to COUNTY by legislative appropriation. In addition, this Contract is subject to any additional restrictions, limitations or conditions, or statutes, regulations or any other laws, whether Federal or those of the State, or of any agency, department, or any

political subdivision of Federal or the State governments, which may affect the provisions, terms or funding of this Contract in any manner.

- b. CONTRACTOR must establish and maintain effective internal controls over all funding awarded to CONTRACTOR by the COUNTY to provide reasonable assurance that CONTRACTOR complies with Federal, State, and County statutes, regulations, and terms and conditions of the Contract.
- c. COUNTY may base funding for CONTRACTOR upon positive performance outcomes, which OHS will monitor throughout the year.
- d. CONTRACTOR must be able to demonstrate that HHAP-2 funds were expended for eligible uses to benefit members of the Target Population.
- e. Funds allocated pursuant to this Contract shall be used exclusively for costs included in CONTRACTOR's Program budget. Contract funds shall not be used as security or to guarantee payments for any non-program obligations nor as loans for non-program activities.
- f. CONTRACTOR certifies and agrees that it will not use funds provided through this Contract to pay for entertainment, gifts, or fundraising activities.
- g. Ineligible Costs – HHAP-2 funds shall not be used for costs associated with activities in violation of any law or for any activities not consistent with the intent of HHAP-2 and the eligible uses identified in California Health and Safety Code Sections 50218.5.

The COUNTY or the State reserves the right to request additional information and clarification to determine the reasonableness and eligibility of all costs to be paid with funds made available by this Contract. If CONTRACTOR or its Subcontractors use HHAP-2 funds to pay for ineligible activities, CONTRACTOR shall be required to reimburse these funds to the COUNTY within thirty (30) days of the request.

- 1) An expenditure which is not authorized by this Contract, or which cannot be adequately documented, shall be disallowed and must be reimbursed to the COUNTY by CONTRACTOR.
  - 2) The State, at its sole and reasonable discretion, shall make the final determination regarding the allowability of expenditures of HHAP-2 funds.
  - 3) Program funds shall not be used to supplant existing local funds for homeless housing, assistance, or prevention. HHAP-2 funds cannot replace local funds that are committed to an existing or developing homeless assistance program. However, if funds previously supporting a service or project end or are reduced for reasons beyond the control of CONTRACTOR and services or housing capacity will be lost as a result of these funds ending, HHAP-2 funds may be used to maintain the service or program and are not considered supplanting [examples include, but are not limited to, a time-limited city and/or county tax or one-time block grant, such as Homeless Emergency Aid Program (HEAP) grant].
- h. CONTRACTOR must ensure that:
- 1) One hundred percent (100%) of HHAP-2 funds shall be fully expended by June 30, 2026; and
  - 2) Any funds not expended by June 30, 2026 shall be returned to COUNTY.
- “Expended” means all HHAP-2 funds obligated under the Contract or subcontracts have been fully paid and receipted, and no invoices remain outstanding.”

Reports submitted by the CONTRACTOR will be utilized to ensure that CONTRACTOR is on track to expend 100 percent of HHAP-2 funds by June 30, 2026.

- i. HHAP-2 funds may not be obligated and expended prior to the effective date of this Contract. "Obligate" means that CONTRACTOR has placed orders, entered into sub-contracts, received services, or entered into similar transactions that require payment from the Contract award.
- j. All proceeds from any interest-bearing account established by the CONTRACTOR for the deposit of HHAP-2 funds must be used for HHAP-2-eligible activities. Documentation of all expenditures and accrued interest shall be reported on the forms provided by OHS (i.e., HHAP-2 Expenditure Report).
- k. Any housing-related activities funded with HHAP-2 funds, including but not limited to, emergency shelter, rapid-rehousing, rental assistance, transitional housing and permanent supportive housing must be in compliance or otherwise aligned with the Core Components of Housing First, pursuant to Welfare and Institution Code Section 8255(b).
- l. CONTRACTOR confirms that rental assistance will be issued directly to a property owner or an agent authorized to act on behalf of a property owner.
- m. Joint Funding – For all programs and services for which there are sources of funds in addition to COUNTY funds as provided under this Contract, CONTRACTOR shall provide proof of such funding. Contractor must be able to account for the receipt, obligation and expenditure of funds.  
  
The COUNTY shall NOT pay for any services provided by CONTRACTOR which are funded by other sources. All restrictions and/or requirements provided in this Contract relative to accounting, budgeting, and reporting apply to the total program regardless of funding sources.
- n. The COUNTY reserves the right to reduce the Contract award when the COUNTY's fiscal monitoring indicates that CONTRACTOR's rate of expenditure will result in unspent funds at the end of the Contract term or if it is determined that costs incurred are not in conformance with eligible costs as defined in Health and Safety Code Section 50220.5(d). Changes in the Contract award will be done after consultation with CONTRACTOR. Such changes shall be incorporated into this Contract by written amendment(s).
- o. CONTRACTOR may not use HHAP-2 grant funding to supplant existing local funds for homeless housing, assistance, or prevention, and funds must be expended in compliance with Housing First requirements per Health and Safety Code Section 50220.5(g).

**B.3.6 Fiscal Award Monitoring**

- a. The COUNTY has the right to monitor the Contract during the Contract period to ensure accuracy of expenditure reports and compliance with applicable laws and regulations.
- b. CONTRACTOR agrees to furnish duly authorized representatives from the COUNTY and the State access to all financial records necessary to review or audit Contract services and to evaluate the cost, quality, and appropriateness of services.
- c. If the State or the COUNTY determines that all, or any part of, the payments made by the COUNTY to CONTRACTOR pursuant hereto are not eligible expenses in accordance with this Contract, said funds will be repaid by CONTRACTOR to the COUNTY. In the event such payment is not made on demand, the COUNTY may withhold future disbursements to CONTRACTOR until such disallowances are paid by CONTRACTOR. If disallowable expenses are not reimbursed within thirty (30) days of demand, the Contract will terminate without consultation at the COUNTY's sole and absolute discretion.
- d. If there is a conflict between a State audit of this Contract and a COUNTY audit of this Contract, the State audit shall take precedence.



**B.3.7 Closeout**

CONTRACTOR shall submit a closeout report including a narrative of the project outcomes, an inventory of all equipment and property acquired or improved by HHAP-2 funds, and a final financial report, upon termination or completion of the services specified in this Contract.

CONTRACTOR agrees to adhere to and comply with all of the closeout procedures detailed below; including, but not limited to the following:

- a. Disposition of Program assets shall be determined by the COUNTY when the Contract is terminated.
- b. CONTRACTOR shall submit within forty-five (45) days after the date of expiration of this Contract, all financial, performance, and other reports required by this Contract; and in addition, will cooperate in a Program audit by the COUNTY.
- c. Any unobligated/unexpended funds disbursed in advance to CONTRACTOR shall be returned to the COUNTY within thirty (30) days after the expiration of the Contract term.
- d. CONTRACTOR must account for any real and personal property acquired with HHAP-2 funds.
- e. Closeout will remain pending until all requirements are met and all outstanding issues with the CONTRACTOR have been resolved to the satisfaction of the COUNTY.

**B.3.8 Homeless Management Information System**

The HMIS is a local database application used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at risk of homelessness in the COUNTY. CONTRACTOR must ensure that data on all persons served are entered into the COUNTY-wide HMIS. HMIS is managed and operated by OHS. HMIS technical and data standards are set forth in the Final 2017 HMIS Data Standards, on file with OHS.

- a. CONTRACTOR shall enter into a Memorandum of Understanding (MOU) with the HMIS Lead Agency where the CONTRACTOR agrees to share HMIS data with other HHAP-2 funded agencies, unless prohibited by law.
- b. CONTRACTOR is required to work with OHS staff to ensure the timely and accurate set-up of their HMIS program profile and to ensure the HMIS program profile is setup in a manner that accurately captures the data pertinent to CONTRACTOR's program. CONTRACTOR's program profile must be setup prior to CONTRACTOR submitting their first HHAP-2 Disbursement Request form.
- c. CONTRACTOR shall submit a copy of HMIS reports (see Exhibit 4 – HMIS CLIENT DATA REPORT SAMPLE) with the quarterly expenditure reports. In the case of Domestic Violence service providers or other agencies prohibited from entering data into HMIS, documentation from the HMIS lead agency certifying that the CONTRACTOR is using a comparable database shall be delivered to the COUNTY. The contact information for the "HMIS Lead Agency" is:

Mike Bell, HMIS Lead  
County of San Bernardino  
Office of Homeless Services  
215 North "D" Street, Suite 301  
San Bernardino CA 92415-0044  
[Michael.Bell@hss.sbcounty.gov](mailto:Michael.Bell@hss.sbcounty.gov)  
Phone: 909-501-0613

- d. CONTRACTOR must ensure all required data elements, as listed below, are entered into the HMIS system for HHAP-2 participants, in a timely manner, and is inputted no later than two (2) working days after program entry. Services rendered to clients must be entered into HMIS no later than two (2) working days from date

of service(s). All clients who exit the program must have an updated status in HMIS within two (2) working days from actual exit date. Failure to meet the above data inputting requirements will constitute a violation of the terms and conditions of this Contract. CONTRACTOR will be notified by OHS, and if not rectified, the Contract may be terminated at the COUNTY's sole and absolute discretion.

- e.** In addition to the timely entry of HMIS data, CONTRACTOR is required to enter accurate and complete data. The COUNTY will ensure CONTRACTOR adheres to Data Quality Standards, as established by HUD, and data entry requirements, as set forth in the HMIS MOU and the OHS Policy Handbook. The Data Quality Standards assess the data quality and completeness of the following Data Elements entered:

- 1)** Client Demographic Data
  - a)** Name
  - b)** Social Security Number
  - c)** Date of Birth
  - d)** Race
  - e)** Ethnicity
  - f)** Gender
  - g)** Veteran Status
- 2)** Universal Data
  - a)** Disabling Condition
  - b)** Project Start Date
  - c)** Project Exit Date
  - d)** Destination
  - e)** Relationship to Head of Household
  - f)** Client Location
  - g)** Housing Move-in Date
  - h)** Living Situation
- 3)** Common Program Specific Data Elements
  - a)** Income and Sources
  - b)** Non-Cash Benefits
  - c)** Health Insurance
  - d)** Disability Elements
  - e)** Physical Disability
  - f)** Developmental Disability
  - g)** Chronic Health Condition
  - h)** HIV/AIDS
  - i)** Mental Health Problem
  - j)** Substance Abuse
  - k)** Domestic Violence
  - l)** Contact
  - m)** Date of Engagement
  - n)** Bed-Night Date

- o) Housing Assessment Disposition
- 4) Data Timeliness
  - a) Entry Timeliness
  - b) Exit Timeliness
- f. According to Data Quality Standards, CONTRACTOR is required to have a five-percent (5%) or less error rate to ensure data accuracy and less than a five-day lapse in timeliness for entry of data at time of client entry, services are rendered, and client exit. Any performance benchmarks not meeting these standards will be captured on CONTRACTOR's HUD Data Quality Report, see Exhibit 5. The report will be generated by CONTRACTOR and submitted quarterly with expenditure reports. OHS will review reports and data deficiencies, if any, will be identified and discussed with CONTRACTOR to determine methods to remediate and/or improve data quality scores.
- g. If CONTRACTOR continues to not meet data entry and data quality benchmarks, as established by HUD and set forth in the HMIS MOU and the OHS Policy Handbook, COUNTY may terminate Contract as set forth in CORRECTION OF PERFORMANCE DEFICIENCIES Section.
- h. CONTRACTOR agrees to provide the COUNTY and/or the State access to HMIS data collected and entered into HMIS, upon request, and to participate in any statewide data initiative as directed by the State including, but not limited to, a statewide data integration environment.

**B.3.9 Housing First**

The methodology of providing services will follow the Housing First policy. This is an approach that offers permanent, affordable housing as quickly as possible for individuals and families experiencing homelessness, and then provides the supportive services and connections to the community-based supports people need to avoid returning to homelessness. HHAP-2 projects must align and comply with the core components of Housing First as provided in Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code.

**B.3.10 Program Participant Eligibility**

CONTRACTOR shall ensure that:

- a. HHAP-2 participants meet the Homeless definition as defined in Section 578.3 of Title 24 of the Code of Federal Regulations:
  - 1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
    - a) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
    - b) An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by Federal, State and local government programs for low-income individuals); or
    - c) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.
  - 2) An individual or family who will imminently lose their primary nighttime residence, provided that:

- a) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - b) No subsequent residence has been identified; and
  - c) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;
- 3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
- a) Are defined as homeless under Section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), Section 637 of the Head Start Act (42 U.S.C. 9832), Section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), Section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), Section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), Section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or Section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);
  - b) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - c) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
  - d) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or
- 4) Any individual or family who:
- a) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
  - b) Has no other residence; and
  - c) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.
- b. HHAP-2 participants are referred by CES to CONTRACTOR.
  - c. CONTRACTOR coordinates Program enrollment and services in collaboration with CES.

**B.3.11 Job Training and Employment**

CONTRACTOR agrees to refer HHAP-2 clients that are eligible for job training and employment services to the County of San Bernardino Workforce Development Department (WDD). Contractor also agrees to refer eligible “work ready” clients to the COUNTY’s Community Employment Pathways (CEP) program for job placement services. Number of participants who have been referred to WDD and CEP will be reported on a quarterly basis by CONTRACTOR.

**B.3.12 Staffing Requirements**

CONTRACTOR shall provide the necessary professional staff to meet the needs of the homeless population following the Housing First model (ex. Case managers, Clinicians, medical staff, peer advocates, employment specialists, and eligibility specialists). CONTRACTOR must have the readiness capacity to immediately perform and administer homeless efforts through HHAP-2 funding.

**C. GENERAL CONTRACT REQUIREMENTS**

**C.1 Air, Water Pollution Control, Safety and Health**

CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.2 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. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**C.3 Background Checks for Contractor Personnel**

CONTRACTOR shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the COUNTY; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the COUNTY and not in violation of applicable law, CONTRACTOR shall conduct a background check, at CONTRACTOR’s sole expense, on all its personnel providing Services. If requested by the COUNTY, CONTRACTOR shall provide the results of the background check of each individual to the COUNTY. Such background check shall be in the form generally used by CONTRACTOR in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. CONTRACTOR personnel who do not meet the COUNTY’s hiring criteria, in COUNTY’s sole discretion, shall not be assigned to work on COUNTY property or Services, and COUNTY shall have the right, at its sole option, to refuse access to any Contract personnel to any COUNTY facility.

**C.4 Change of Address**

CONTRACTOR shall notify the COUNTY in writing, of any change in mailing address within ten (10) business days of the change.

**C.5 Child Support Compliance Act**

For any Contract in excess of \$100,000, CONTRACTOR acknowledges in accordance with Public Contract Code 7110, that:

**C.5.1** CONTRACTOR recognizes the importance of child and family support obligations and shall fully comply with all applicable State and Federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family code; and

**C.5.2** CONTRACTOR, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

**C.6 Choice of Law**

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

**C.7 Compliance with County Policy**

In performing the Services and while at COUNTY facilities, CONTRACTOR personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the COUNTY regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the COUNTY; and (d) abide by all laws applicable to the COUNTY facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to CONTRACTOR or CONTRACTOR personnel or may be made available to CONTRACTOR or CONTRACTOR personnel by conspicuous posting at a COUNTY facility, electronic posting, or other means generally used by COUNTY to disseminate such information to its employees or contractors. CONTRACTOR shall be responsible for the promulgation and distribution of County Policies to CONTRACTOR personnel to the extent necessary and appropriate.

COUNTY shall have the right to require CONTRACTOR's employees, agents, representatives and subcontractors to exhibit identification credentials issued by the COUNTY in order to exercise any right of access under this Contract.

**C.8 Compliance with State and Federal Laws, Rules, and Regulations**

CONTRACTOR agrees to comply with all State and Federal laws, rules and regulations that pertain to construction, health and safety, labor, fair employment practices, environmental protection, equal opportunity, fair housing, and all other matters applicable and/or related to the HHAP-2 program, CONTRACTOR, its subcontractors, and all eligible activities.

**C.9 Confidentiality**

CONTRACTOR shall ensure that all staff, volunteers and/or Subcontractors performing Services under this Contract comply with the terms and conditions as set forth in the Human Services Information Privacy and Security Requirements specified at <http://hss.sbcounty.gov/Privacy> prior to providing any Services. CONTRACTOR shall immediately notify the COUNTY of any suspected or actual breach of confidential information as further detailed in the requirements. These requirements specified at <http://hss.sbcounty.gov/Privacy> are hereby incorporated by this reference.

**C.10 Conflict of Interest**

CONTRACTOR shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the COUNTY. CONTRACTOR shall make a reasonable effort to prevent employees, CONTRACTOR, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and State law. In the event the COUNTY determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the COUNTY and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom CONTRACTOR's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**C.11 Contract Amendments**

CONTRACTOR agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of CONTRACTOR and COUNTY.

**C.12 Contract Assignability**

Without the prior written consent of the COUNTY, the Contract is not assignable by CONTRACTOR either in whole or in part.

**C.13 Contract Exclusivity**

This is not an exclusive Contract. The COUNTY reserves the right to enter into a contract with other contractors for the same or similar services. The COUNTY does not guarantee or represent that the CONTRACTOR will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Contract.

**C.14 Copyright**

The COUNTY shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the COUNTY of San Bernardino as the funding agency and CONTRACTOR as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by CONTRACTOR in the United States or in any other country without the express written consent of the COUNTY. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the COUNTY prior to publication.

**C.15 County Internship Initiative**

CONTRACTOR agrees to be contacted by the COUNTY to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by CONTRACTOR'S business. CONTRACTOR is encouraged, and agrees to make good faith efforts, to utilize the COUNTY'S program to aid the **County's Vision for a skilled workforce and jobs that create countywide prosperity**, and its **goal to Create, Maintain and Grow Jobs and Economic Value in the County**. The COUNTY'S objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the COUNTY'S internship initiative, the CONTRACTOR remains an independent contractor and shall not be construed as agents, officers, or employees of the COUNTY. More information about the COUNTY'S GenerationGo! Career Pathways Program can be located at <https://wp.sbcounty.gov/workforce/career-pathways/>.

**C.16 County Representative**

The Chief of Homeless Services, or his/her designee, shall represent the COUNTY in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by CONTRACTOR. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, except for budget category modifications and non-substantive changes, which may be approved by the Assistant Executive Officer of Human Services, Deputy Executive Office of Community Revitalization, or the Chief of Homeless Services.

**C.17 Damage to County Property**

CONTRACTOR shall repair, or cause to be repaired, at its own cost, all damages to COUNTY vehicles, facilities, buildings or grounds caused by the willful or negligent acts of CONTRACTOR or its employees or agents. Such repairs shall be made immediately after CONTRACTOR becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the CONTRACTOR fails to make timely repairs, the COUNTY may make any necessary repairs. The CONTRACTOR, as determined by the COUNTY, shall repay all costs incurred by the COUNTY for such repairs, by cash payment upon demand, or the COUNTY may deduct such costs from any amounts due to the CONTRACTOR from the COUNTY, as determined at the COUNTY'S sole discretion.

**C.18 Debarment and Suspension**

CONTRACTOR certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration’s System for Award Management website <https://www.sam.gov>). CONTRACTOR further certifies that if it or any of its Subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**C.19 Disclosure of Criminal and Civil Procedures**

The COUNTY reserves the right to request the information described herein from the CONTRACTOR. Failure to provide the information may result in a termination of the Contract. The COUNTY also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The CONTRACTOR also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

CONTRACTOR is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm’s business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the CONTRACTOR will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the CONTRACTOR is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. “Legal proceedings” means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the CONTRACTOR will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

CONTRACTOR shall notify the COUNTY immediately of any claim or action undertaken by or against it, which affects or may affect this Contract or the COUNTY, and shall take such action with respect to the claim or action as is consistent with the terms of this Contract and the interests of the COUNTY.

For purposes of this provision “key employees” includes any individuals providing direct service to the COUNTY. “Key employees” do not include clerical personnel providing service at the firm’s offices or locations.

**C.20 Drug-Free Workplace Certification**

Certification of Compliance: By signing this Contract, CONTRACTOR, and its subcontractors, hereby certify, under penalty of perjury under the laws of the State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

**C.20.1** Publish a statement notifying employees and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code Section 8355(a)(1).

**C.20.2** Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:

- a. The dangers of drug abuse in the workplace;
- b. CONTRACTOR’s policy of maintaining a drug-free workplace;



- c. Any available counseling, rehabilitation, and employee assistance programs; and,
- d. Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

**C.20.3** Provide as required by Government Code Section 8355(a)(3), that every employee and/or subcontractor who works under this Agreement:

- a. Will receive a copy of CONTRACTOR's drug-free policy statement; and
- b. Will agree to abide by the terms of CONTRACTOR's condition of employment or subcontract.

**C.21 Drug and Alcohol-Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, CONTRACTOR agrees that CONTRACTOR and CONTRACTOR's employees, while performing service for the COUNTY, on COUNTY property, or while using COUNTY equipment:

**C.21.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

**C.21.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.

**C.21.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where CONTRACTOR or CONTRACTOR's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

CONTRACTOR shall inform all employees that are performing service for the COUNTY on COUNTY property, or using COUNTY equipment, of the COUNTY's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the COUNTY.

The COUNTY may terminate for default or breach of this Contract and any other Contract the CONTRACTOR has with the COUNTY, if the CONTRACTOR or CONTRACTOR's employees are determined by the COUNTY not to be in compliance with above.

**C.22 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**C.23 Employment Discrimination**

During the term of the Contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

During the term of this Contract, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, gender identify, gender expression, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), genetic information, marital status, military and veteran status, and denial of medical and family care leave or pregnancy disability leave. CONTRACTOR and subcontractors shall ensure that the evaluation and treatment of their employees and applicants

for employment are free from such discrimination and harassment. CONTRACTOR and its subcontractors shall comply with the provisions of California's laws against discriminatory practices relating to specific groups: the California Fair Employment and Housing Act (Government Code Section 12900 et seq.); the regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.); and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Government Code, Section 11135-11139.5). CONTRACTOR and its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

**C.24 Environmental Requirements**

In accordance with County Policy 11-08, the COUNTY prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The COUNTY requires CONTRACTOR to use recycled paper for any printed or photocopied material created as a result of this Contract. CONTRACTOR is also required to use both sides of paper sheets for reports submitted to the COUNTY whenever practicable.

To assist the COUNTY in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), CONTRACTOR must be able to annually report the COUNTY'S environmentally preferable purchases. CONTRACTOR must also be able to report on environmentally preferable goods and materials used in the provision of their service to the COUNTY, utilizing a COUNTY approved form.

**C.25 Former County Administrative Officials**

CONTRACTOR agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent CONTRACTOR. The information provided includes a list of former COUNTY administrative officials who terminated COUNTY employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of CONTRACTOR. For purposes of this provision, "COUNTY administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, COUNTY department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**C.26 Improper Consideration**

CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the COUNTY in an attempt to secure favorable treatment regarding this Contract.

The COUNTY, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the COUNTY with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

CONTRACTOR shall immediately report any attempt by a COUNTY officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the COUNTY is entitled to pursue any available legal remedies.

**C.27 Improper Influence**

CONTRACTOR shall make all reasonable efforts to ensure that no COUNTY officer or employee, whose position in the COUNTY enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the CONTRACTOR or officer or employee of the CONTRACTOR.

**C.28 Informal Dispute Resolution**

In the event the COUNTY determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract 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.

**C.29 Inspections**

**C.29.1** The COUNTY and the State reserve the right to inspect any work performed hereunder to ensure that the work is being and has been performed in accordance with the applicable Federal, State and/or local requirements, and this Contract.

**C.29.2** CONTRACTOR agrees to correct all work that is determined based on such inspections not to conform to the applicable requirements; and the COUNTY reserves the right to withhold payments to CONTRACTOR until it is corrected.

**C.30 Iran Contracting Act**

IRAN CONTRACTING ACT OF 2010, Public Contract Code Sections 2200 et seq. (Applicable for all contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code Section 2204(a), the CONTRACTOR certifies that at the time the Contract is signed, the CONTRACTOR signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code Section 2203 as a person (as defined in Public Contract Code Section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code Section 2202.5, or as a person described in subdivision (b) of Public Contract Code Section 2202.5, as applicable.

Contractors are cautioned that making a false certification may subject the CONTRACTOR to civil penalties, termination of existing Contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code Section 2205.

**C.31 Legality and Severability**

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

**C.32 Licenses, Permits and/or Certifications**

CONTRACTOR shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The CONTRACTOR shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. CONTRACTOR will notify the COUNTY immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

CONTRACTOR shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any activities under this Contract, including those necessary to perform design, construction, or operation and maintenance of the activities. CONTRACTOR shall be responsible for observing and complying with any applicable Federal, State, County, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental protection, procurement, and safety laws, rules, regulations, and ordinances. CONTRACTOR shall provide copies of permits and approvals to the COUNTY and/or State upon request.

**C.33 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the COUNTY determines that CONTRACTOR has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the COUNTY, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the COUNTY is entitled to pursue any available legal remedies.

**C.34 Mutual Covenants**

The parties to this Contract 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”.

**C.35 Nondisclosure**

CONTRACTOR shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the COUNTY to CONTRACTOR or an agent of CONTRACTOR or otherwise made available to CONTRACTOR or CONTRACTOR’s agent in connection with this Contract; or, (2) acquired, obtained, or learned by CONTRACTOR or an agent of CONTRACTOR in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**C.36 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

**C.37 Ownership of Documents**

All documents, data, products, graphics, computer programs and reports prepared by CONTRACTOR pursuant to the Contract shall be considered property of the COUNTY upon payment for services (and products, if applicable). All such items shall be delivered to COUNTY at the completion of work under the Contract. Unless otherwise directed by COUNTY, CONTRACTOR may retain copies of such items.

**C.38 Primary Point of Contact**

CONTRACTOR will designate an individual to serve as the primary point of contact for the Contract. CONTRACTOR or designee must respond to COUNTY inquiries within two (2) business days. CONTRACTOR shall not change the primary contact without written acknowledgement to the COUNTY. CONTRACTOR will also designate a back-up point of contact in the event the primary contact is not available.

**C.39 Recitals**

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

**C.40 Records and Retention**

CONTRACTOR shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for Contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the CONTRACTOR’s personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

CONTRACTOR shall retain all records described above for a minimum period of five (5) years after the termination of this Contract. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been commenced before the expiration of the required record retention period, all records must be retained until completion of the action and resolution of all issues which arise from it.

**C.41 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement 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.

**C.42 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or CONTRACTOR's relationship with the COUNTY may be made or used without prior written approval of the COUNTY.

**C.43 Representation of the County**

In the performance of this Contract, CONTRACTOR, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino.

**C.44 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.45 Subcontracting**

CONTRACTOR shall obtain COUNTY's written consent, which COUNTY may withhold in its sole discretion, before entering into contracts with or otherwise engaging any subcontractors who may supply any part of the Services to COUNTY. At COUNTY's request, CONTRACTOR shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the COUNTY, resumes of proposed subcontractor personnel. CONTRACTOR shall remain directly responsible to COUNTY for its subcontractors and shall indemnify COUNTY for the actions or omissions of its subcontractors under the terms and conditions specified in INDEMNIFICATION AND INSURANCE REQUIREMENTS Section. All approved subcontractors shall be subject to the provisions of this Contract applicable to CONTRACTOR Personnel.

**C.45.1** For any Subcontractor, CONTRACTOR shall:

- a. Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- b. Ensure that the Subcontractor follows the COUNTY's reporting formats and procedures as specified by the COUNTY; and
- c. Include in the subcontractor's subcontract substantially similar terms as are provided in CONTRACTOR RESPONSIBILITIES and GENERAL CONTRACT REQUIREMENTS Sections.

**C.45.2** The COUNTY will not reimburse subcontractor directly for any services rendered.

**C.45.3** Upon expiration or termination of this Contract for any reason, the COUNTY will have the right to enter into direct contracts with any of the Subcontractors. CONTRACTOR agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with the COUNTY.

**C.46 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon CONTRACTOR or COUNTY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and COUNTY further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CONTRACTOR for COUNTY.

**C.47 Termination for Convenience**

The COUNTY and the CONTRACTOR each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the CONTRACTOR for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice CONTRACTOR shall promptly discontinue services unless the notice directs otherwise. CONTRACTOR shall deliver promptly to the COUNTY and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

Upon termination of this Contract, unless otherwise approved in writing by the COUNTY, any unexpended funds received by CONTRACTOR shall be returned to the COUNTY within thirty (30) days of the Notice of Termination.

**C.48 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**C.49 Venue**

The parties acknowledge and agree that this Contract 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 Contract will be the Superior Court of California, County of San Bernardino, 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 Contract 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, County of San Bernardino, San Bernardino District.

**D. TERM OF CONTRACT**

This Contract is effective as of effective date and expires June 30, 2026, but may be terminated earlier in accordance with provisions of this Contract.

**E. COUNTY RESPONSIBILITIES**

- E.1** OHS shall provide technical assistance to CONTRACTOR.
- E.2** OHS shall participate in evaluating the progress of the overall program.
- E.3** OHS shall monitor CONTRACTOR on a regular basis in regard to compliance with Contractual requirements.

**F. FISCAL PROVISIONS**

- F.1** The maximum amount of payment under this Contract shall not exceed the total award/allocation amount referenced in Exhibit 1 – HHAP-2 AWARD BY CATEGORY. The consideration to be paid to CONTRACTOR, as provided herein, shall be in full payment for all CONTRACTOR’s services and expenses incurred in the performance hereof.
- F.2** Quarterly disbursements will be made to CONTRACTOR based upon satisfactory performance under the terms of the Contract.
- F.3** CONTRACTOR shall submit expenditure reports on forms provided by OHS quarterly for HHAP-2 services performed under this Contract. All expenditure reports submitted shall clearly reflect all required information specified regarding the services provided for which the claims are made. Expenditure reports shall be completed and forwarded to OHS within thirty (30) days after the last day of the months of March, June, September and December.
- F.4** OHS will review supporting documentation and confirm satisfactory performance prior to processing quarterly disbursements. OHS may request additional supporting documentation and disallow portions of an expenditure report pending satisfactory documentation as determined by OHS. CONTRACTOR attests that by submitting an expenditure report to the COUNTY it has completed all due diligence necessary and verified eligibility of HHAP-2 funding.

**F.5** Should CONTRACTOR fail to meet performance requirements; including, but not limited to, failure to submit timely reports as contractually required, failure to correct issues, inappropriate expenditure reporting, timely and accurate HMIS data entry, and meeting performance outcomes expectations, the COUNTY may discontinue quarterly disbursements to CONTRACTOR and change to a cost reimbursement methodology.

If CONTRACTOR continues to fail to meet performance requirements, the COUNTY may, at its sole and absolute discretion, invoke Section 1.2 CORRECTION OF PERFORMANCE DEFICIENCIES of the Contract.

**F.6** CONTRACTOR shall accept all payments from the COUNTY via electronic funds transfer (EFT) directly deposited into the CONTRACTOR's designated checking or other bank account. CONTRACTOR shall promptly comply with directions and accurately complete forms provided by the COUNTY required to process EFT payments.

**F.7** COUNTY is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on CONTRACTOR or on any taxes levied on employee wages. The COUNTY shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the COUNTY pursuant to the Contract.

**F.8** Funds made available under this Contract shall not supplant any Federal, State or any governmental funds intended for services of the same nature as this Contract. CONTRACTOR shall not claim reimbursement or payment from COUNTY for, or apply sums received from COUNTY with respect to that portion of its obligations that have been paid by another source of revenue. CONTRACTOR agrees that it will not use funds received pursuant to this Contract, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of the COUNTY.

**F.9** CONTRACTOR shall adhere to the COUNTY's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the COUNTY. In addition, CONTRACTOR is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

## **G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **G.1 Indemnification**

The CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless the COUNTY and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of Contractor's acts or omissions or performance under this Contract and for any costs or expenses incurred by the COUNTY on account of any such claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The CONTRACTOR indemnification obligation applies to the COUNTY's "active" as well as "passive" negligence but does not apply to the COUNTY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.

### **G.2 Additional Insured**

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the COUNTY to vicarious liability but shall allow coverage for the COUNTY to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

### **G.3 Waiver of Subrogation Rights**

The CONTRACTOR shall require the carriers of required coverages to waive all rights of subrogation against the COUNTY, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONTRACTOR and CONTRACTOR's employees or agents from waiving the right of subrogation

prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against the COUNTY.

**G.4 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the COUNTY.

**G.5 Severability of Interests**

The CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the CONTRACTOR and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

**G.6 Proof of Coverage**

The CONTRACTOR shall furnish Certificates of Insurance to the COUNTY Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Contract, the CONTRACTOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

**G.7 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**G.8 Deductibles and Self-Insured Retention**

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

**G.9 Failure to Procure Coverage**

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, the COUNTY has the right but not the obligation or duty to cancel the Contract or obtain insurance if it deems necessary and any premiums paid by the COUNTY will be promptly reimbursed by the CONTRACTOR or COUNTY payments to the CONTRACTOR will be reduced to pay for COUNTY purchased insurance.

**G.10 Insurance Review**

Insurance requirements are subject to periodic review by the COUNTY. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the COUNTY. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the COUNTY, inflation, or any other item reasonably related to the COUNTY's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Contract. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the COUNTY.



## **G.11 Insurance Specifications**

The CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If the CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the Contract term the following types of insurance with limits as shown:

**G.11.1 Workers' Compensation/Employer's Liability** – A program of Workers' Compensation insurance or a State-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the CONTRACTOR and all risks to such persons under this Contract.

If CONTRACTOR has no employees, it may certify or warrant to the COUNTY that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the COUNTY's Director of Risk Management.

With respect to CONTRACTORS that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

**G.11.2 Commercial/General Liability Insurance** – The CONTRACTOR shall carry General Liability Insurance covering all operations performed by or on behalf of the CONTRACTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

**G.11.3 Automobile Liability Insurance** – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the CONTRACTOR is transporting one or more non-employee passengers in performance of Contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the CONTRACTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

**G.11.4 Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**G.11.5 Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of the COUNTY.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after Contract completion.

**G.11.6 Abuse/Molestation Insurance** – CONTRACTOR shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

## **H. RIGHT TO MONITOR AND AUDIT**

**H.1** The COUNTY, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of CONTRACTOR in the delivery of services provided under this Contract. CONTRACTOR shall give full cooperation, in any auditing or monitoring conducted. CONTRACTOR shall cooperate with the COUNTY in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the COUNTY.

**H.2** The COUNTY or the State reserves the right to perform or cause to be performed a financial audit. At the request of the COUNTY or the State, CONTRACTOR shall provide, at its own expense, a financial audit prepared by a certified public accountant. If there are audit findings, CONTRACTOR must submit a detailed response acceptable to the COUNTY and/or the State for each audit finding within ninety (90) days from the date of the audit finding report.

**H.3** If audit findings reveal ineligible/disallowed expenditures, CONTRACTOR will be required to repay disbursed funds to the COUNTY.

**H.4** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by COUNTY representatives for a minimum period of five (5) years after termination of this Contract or until all pending COUNTY, State and Federal audits are completed, whichever is later.

## **I. CORRECTION OF PERFORMANCE DEFICIENCIES**

**I.1** Failure by CONTRACTOR to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract. The following shall each constitute a breach of this Contract:

**I.1.1** CONTRACTOR’s failure to comply with the terms and conditions of this Contract;

**I.1.2** Use of, or permitting the use of, HHAP-2 funds provided under this Contract for any ineligible activities; or

**I.1.3** Any failure to comply with the deadlines set forth in this Contract.

- I.2** In the event of a non-cured breach, the COUNTY may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - I.2.1** Afford CONTRACTOR thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of the COUNTY.
  - I.2.2** Notwithstanding any other provision of this Contract, the COUNTY may withhold payments to CONTRACTOR, if CONTRACTOR has been given notice of any deficiency(ies) and has failed to correct such deficiency(ies). Such deficiency(ies) may include, but are not limited to: failure to provide services described in this Contract; Federal, State, and COUNTY audit exceptions resulting from noncompliance; violations of pertinent Federal and State laws and regulations; and significant performance problems as determined by the COUNTY or State from monitoring visits.
  - I.2.3** The COUNTY has the sole and absolute discretion to revoke full or partial provisions of the Contract, delegated activities or obligations, or application of other remedies permitted by State or Federal law when the COUNTY or State determines CONTRACTOR has not performed satisfactorily.
  - I.2.4** Terminate this Contract immediately and be relieved of the payment of any consideration to CONTRACTOR. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by the COUNTY. The cost to the COUNTY shall be deducted from any sum due or disbursed to the CONTRACTOR under this Contract and the balance, if any, shall be paid by the CONTRACTOR upon demand.
- I.3** In addition to any other remedies that may be available to the COUNTY in law or equity for breach of this Contract, the COUNTY may:
  - I.3.1** Bar the CONTRACTOR from applying for future HHAP-2 funds;
  - I.3.2** Revoke any other existing HHAP-2 award(s) to the CONTRACTOR;
  - I.3.3** Require the return of any unexpended HHAP-2 funds disbursed under this Contract;
  - I.3.4** Require repayment of HHAP-2 funds expended under this Agreement; and
  - I.3.5** Seek such other remedies as may be available under this Contract or any law.
- I.4** All remedies available to the COUNTY are cumulative and not exclusive.

**J. NOTICES**

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

<p>San Bernardino County          Office of Homeless Services          Attn: Tom Hernandez, Chief of Homeless Services          215 North D. Street, Suite 301          San Bernardino, CA 92415-0044</p>	<p>City of Montclair          Attn: Alyssa Colunga, Assistant Director of          Human Services &amp; Grants Manager          5111 Benito Street          Montclair, CA 91763</p>
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Notice shall be deemed communicated two (2) COUNTY working days from the time of mailing if mailed as provided in this paragraph.

**K. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract 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 Contract and signs the same of its own free will.

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.

**IN WITNESS WHEREOF**, San Bernardino County and the CONTRACTOR have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

CITY OF MONTCLAIR

*(Print or type name of corporation, company, contractor, etc.)*

►  
 \_\_\_\_\_  
 Curt Hagman, Chairman, Board of Supervisors

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

Dated: \_\_\_\_\_  
 SIGNED AND CERTIFIED THAT A COPY OF THIS  
 DOCUMENT HAS BEEN DELIVERED TO THE  
 CHAIRMAN OF THE BOARD

Edward C. Starr  
 Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Lynna Monell  
 Clerk of the Board of Supervisors  
 of San Bernardino County

Title City Manager  
 \_\_\_\_\_  
*(Print or Type)*

By \_\_\_\_\_  
 Deputy

Dated: \_\_\_\_\_  
 5111 Benito Street

Address \_\_\_\_\_  
 Montclair, CA 91763

**FOR COUNTY USE ONLY**

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Suzanne Bryant, Deputy County Counsel	► _____	► Martha Zepeda, Deputy Executive Officer
Date _____	Date _____	Date _____

**Award by Category**

**City of Montclair**

\$20,000      Category: Prevention

Case Management- contract services to provide case management to clients who are homeless or at risk of homelessness

\$21,085      Category: Rental Assistance

Rental assistance and hotel vouchers provided to families and individuals who are homeless or at risk of homelessness.

City of Montclair's proposed Prevention and Rental Assistance Programs, totaling \$150,000, have been partially awarded the HHAP-2 grant amount, up-to and not-to-exceed of \$41,085 in Prevention and Rental Assistance expenses as identified above

## SCOPE OF WORK

### CITY OF MONTCLAIR

CONTRACTOR will use strategies implemented will follow the Housing First Policy and align with the San Bernardino County 10-year strategy update recommendations for individuals and families who are chronically homeless. A comprehensive outreach program will be implemented by culturally competent staff and volunteers from the community with the goal of providing rental assistance or rapid rehousing. The primary goal will be to house the individual's experiencing homelessness or those at risk of homelessness and to provide the services needed to prevent them from returning to homelessness. The City of Montclair Outreach team consists of a code enforcement personnel with 30 years of experience in working with individuals who are homeless, and volunteers from the community who are relatable to the population that we serve. The Outreach team operates on the core value of treating every person they come in contact with dignity and respect, while engaging them in services that will promote a positive transformation. Our team meets individuals where they are in the community and customizes services offered based on the needs of the client. The City of Montclair Homeless Outreach program does not work in isolation, the program partners with a multitude of organizations across multiple counties to provide the services needed to our clients.

The City will utilize a progressive engagement approach through one-on-one contact with homeless individuals throughout the City:

- I. Each individual is provided comprehensive information of resources available to them.
- II. Each individual who is willing to accept help will:
  - a. have their information entered into the Coordinated Entry System to assess resources that best fit the individual's needs; and
    - i. if they are currently homeless:
      1. they will be transported to various in-house rehabilitation centers, sober living homes, as well as faith-based facilities throughout Los Angeles, San Bernardino, and Riverside County; or
      2. the individual will be provided temporary housing until resources become available
    - ii. If the individual is at risk of homelessness:
      1. they will be provided with assistance including rental assistance, hotel vouchers, cost of utilities, and/or other emergency needs to allow the individual to remain housed or to obtain permanent housing
    - iii. All individuals will be connected with partner organizations

In addition, to remove barriers for housing, individuals with pending criminal charges and/or warrants for their arrest are represented in court by a private attorney that works closely with the Code Enforcement Unit to dismiss existing criminal charges and/or warrants pending completion of an in-house rehabilitation center or other treatment.

#### Measurable Outcomes:

- At least 17 individuals will be referred to resources annually
- At least 5 individuals will be housed annually.

**HHAP-2 REPORTING REQUIREMENTS**

- A.** Detailed reports containing, at minimum, the following information:
1. Amount awarded to Contractor with activity(ies) identified;
  2. Contract expenditures;
  3. Unduplicated number of homeless persons and households served by HHAP-2 funds;
  4. Unduplicated number of persons and households at imminent risk of homelessness served by HHAP-2 funds;
  5. Number of instances of service;
  6. Increases in capacity for new and existing programs;
  7. Number of unsheltered homeless persons and homeless households becoming sheltered; and
  8. Number of homeless persons and homeless households entering permanent housing.
  9. Number of homeless persons and households successfully exited from HHAP-2 (i.e., in permanent housing) that remain in permanent housing 12 months post-exit from HHAP-2.
  10. Number of persons and households at imminent risk of homelessness successfully exited from HHAP-2 (i.e., in permanent housing) that remain in permanent housing 12 months post-exit from HHAP-2.
- B.** Breakdowns will be expected for each activity (i.e. services, capital improvements, rental assistance, etc.) and program type (i.e. emergency shelter, rapid re-housing, outreach, etc.) for the supplemental reporting requirements listed above, when applicable. The same information will also be requested specifically for the following subpopulations, based on priorities defined by the U.S. Department of Housing and Urban Development:
1. Chronically homeless
  2. Homeless veterans
  3. Unaccompanied homeless youth
  4. Homeless persons in families with children
- C.** Counts by subpopulation will not be required in cases where that information is unavailable, but is expected in cases where client information is entered in the Homeless Management Information System (HMIS).

Clients in Programs  
1/1/2022 to 1/31/2022

### HMIS Client Data Report SAMPLE



**Report Criteria:**

Organizations: Your Agency's Information

Programs: Your Agency's Program Name

<b>Training Organization</b>			Enrolled	Exited	Total	Clients		
<b>TRN ESG Emergency Shelter (ES)</b>			59	2	61	60		
Name	SSN Last 4	Race	Gender	Age	Enroll Date	Exit Date	Days	Enrollment Length
Acuna, Antoinette	XXX-XX-0000	American Indian, Alaska Native, or Indigenous	Female	55	10/12/2015		31	304
Anderson, Jessie	XXX-XX-1001	Asian or Asian American	Male	52	6/4/2019		31	73
Ball, Lucille	XXX-XX-1002	Asian or Asian American	Female	36	12/3/2018		31	1156
Client, CSE	XXX-XX-1003	White	Male	45	9/8/2016		31	1972
Client13, Test13	XXX-XX-1004	Native Hawaiian or Pacific Islander	Male	39	2/11/2020		31	721
Client14, Test13	XXX-XX-1005	Multi-Racial	Male	48	11/7/2016		31	1912
Davis, Emma	XXX-XX-7999	White	Female	7	9/9/2019		31	876
Davis, Liam	XXX-XX-5544	White	Male	34	9/9/2019		31	876
Doe, Jane	XXX-XX-1111	White	Female	9	7/24/2019		31	923
Doe, John Jacob Jr		White	Male	59	7/24/2019		31	923
Garcia, Hector	XXX-XX-4411	White	Male	2	9/23/2020		31	496
Garcia, Jose	XXX-XX-4113	White	Male	37	7/31/2016		31	2011
Garcia, Maria	XXX-XX-4111	White	Female	32	2/2/2015		31	2556
Garcia, Martha	XXX-XX-5411	White	Female	18	9/23/2020		31	496
Hemington, Alice	XXX-XX-6111	White	Female	46	1/28/2019		31	1100
homeless, me	XXX-XX-1112	Asian or Asian American	Male	51	3/21/2017		31	1778
Johnson, Jeff	XXX-XX-2111	Multi-Racial	Male	34	1/3/2022	1/11/2022	9	9
Johnson, Jim	XXX-XX-3111	White	Male	17	1/3/2022	1/12/2022	10	10



**SAMPLE**

HUD Data Quality Report

12/2/2019 to 12/2/2020

Report Criteria

Organizations: Agency Name

Programs: Name of HHAP Project



**Q1. Report Validation Table**

Total Number of Persons Served	141
Number of Adults (age 18 or over)	119
Number of Children (under age 18)	22
Number of Persons with Unknown Age	0
Number of leavers	96
Number of adult leavers	84
Number of adult and head of household leavers	84
Total Number of Stayers	45
Number of Adult Stayers	35
Number of Veterans	59
Number of Chronically Homeless Persons	50
Number of youth under age 25	2
Number of parenting youth under age 25 with children	1
Number of Adult Heads of Household	100
Number of child and unknown-age heads of household	0
Heads of households and adult stayers in the project 365 days or more	4

**Q2. Personally Identifiable Information (PII)**

Data Element	Client Doesn't Know / Refused	Information Missing	Data Issues	% of Error Rate
Name (3.1)	0	0	0	0.00%
Social Security Number (3.2)	1	0	0	0.71%
Date of Birth (3.3)	0	0	0	0.00%
Race (3.4)	0	1		0.71%
Ethnicity (3.5)	0	0		0.00%
Gender (3.6)	0	0		0.00%
Overall Score				1.42%

Staff Member

12/2/2020 2:17 PM



**Q3. Universal Data Elements**

Data Element	Error Count	% of Error Rate
Veteran Status (3.7)	0	0.00%
Project Entry Date (3.10)	0	0.00%
Relationship to Head of Household (3.15)	0	0.00%
Client Location (3.16)	2	2.00%
Disabling Condition (3.8)	11	7.80%

**Q4. Income and Housing Data Quality**

Data Element	Error Count	% of Error Rate
Destination (3.12)	0	0.00%
Income and Sources (4.2) at Start	7	5.88%
Income and Sources (4.2) at Annual Assessment	4	100.00%
Income and Sources (4.2) at Exit	0	0.00%

**Q5. Chronic Homelessness**

Entering into project type	Count of total records	Missing time in institution (3.917.2 )	Missing time in housing (3.917.2)	Approximate Date started (3.917.3) DK/R/missing	Number of times (3.917.4) DK/R /missing	Number of months (3.917.5) DK/R/missing	% of records unable to calculate
ES, SH, Street Outreach	30			2	10	5	36.67%
TH	0	0	0	0	0	0	0.00%
PH (all)	89	0	2	0	0	1	3.37%
Total	119						11.76%

**Q6. Timeliness**

Time for Record Entry	Number of Project Start Records	Number of Project Exit Records
0 days	16	12
1-3 Days	9	25
4-6 days	12	7
7-10 days	16	6
11+ days	39	46

**Q7. Inactive Records: Street Outreach & Emergency Shelter**

Staff Member

HUD Data Quality Report

12/2/2019 to 12/2/2020



Data Element	# of Records	# of Inactive Records	% of Inactive Records
Contact (Adults and Heads of Household in Street Outreach or ES - NBN)	0	0	0.00%
Bed Night (All clients in ES - NBN)	0	0	0.00%

**State of California**  
**WELFARE AND INSTITUTIONS CODE**  
**Section 8255**

8255. For purposes of this chapter:

(a) "Coordinating council" means the Homeless Coordinating and Financing Council established pursuant to Section 8257.

(b) "Core components of Housing First" means all of the following:

(1) Tenant screening and selection practices that promote accepting applicants regardless of their sobriety or use of substances, completion of treatment, or participation in services.

(2) Applicants are not rejected on the basis of poor credit or financial history, poor or lack of rental history, criminal convictions unrelated to tenancy, or behaviors that indicate a lack of "housing readiness."

(3) Acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of crisis response systems frequented by vulnerable people experiencing homelessness.

(4) Supportive services that emphasize engagement and problem solving over therapeutic goals and service plans that are highly tenant-driven without predetermined goals.

(5) Participation in services or program compliance is not a condition of permanent housing tenancy.

(6) Tenants have a lease and all the rights and responsibilities of tenancy, as outlined in California's Civil, Health and Safety, and Government codes.

(7) The use of alcohol or drugs in and of itself, without other lease violations, is not a reason for eviction.

(8) In communities with coordinated assessment and entry systems, incentives for funding promote tenant selection plans for supportive housing that prioritize eligible tenants based on criteria other than "first-come-first-serve," including, but not limited to, the duration or chronicity of homelessness, vulnerability to early mortality, or high utilization of crisis services. Prioritization may include triage tools, developed through local data, to identify high-cost, high-need homeless residents.

(9) Case managers and service coordinators who are trained in and actively employ evidence-based practices for client engagement, including, but not limited to, motivational interviewing and client-centered counseling.

(10) Services are informed by a harm-reduction philosophy that recognizes drug and alcohol use and addiction as a part of tenants' lives, where tenants are engaged in nonjudgmental communication regarding drug and alcohol use, and where tenants are offered education regarding how to avoid risky behaviors and engage in safer practices, as well as connected to evidence-based treatment if the tenant so chooses.

(11) The project and specific apartment may include special physical features that accommodate disabilities, reduce harm, and promote health and community and independence among tenants.

(c) "Homeless" has the same definition as that term is defined in Section 91.5 of Title 24 of the Code of Federal Regulations.

(d) (1) "Housing First" means the evidence-based model that uses housing as a tool, rather than a reward, for recovery and that centers on providing or connecting homeless people to permanent housing as quickly as possible. Housing First providers offer services as needed and requested on a voluntary basis and that do not make housing contingent on participation in services.

(2) (A) "Housing First" includes time-limited rental or services assistance, so long as the housing and service provider assists the recipient in accessing permanent housing and in securing longer-term rental assistance, income assistance, or employment.

(B) For time-limited, supportive services programs serving homeless youth, programs should use a positive youth development model and be culturally competent to serve unaccompanied youth under 25 years of age. Providers should work with the youth to engage in family reunification efforts, where

appropriate and when in the best interest of the youth. In the event of an eviction, programs shall make every effort, which shall be documented, to link tenants to other stable, safe, decent housing options. Exit to homelessness should be extremely rare, and only after a tenant refuses assistance with housing search, location, and move-in assistance.

(e) "State programs" means any programs a California state agency or department funds, implements, or administers for the purpose of providing housing or housing-based services to people experiencing homelessness or at risk of homelessness, with the exception of Federally funded programs with requirements inconsistent with this chapter or programs that fund emergency shelters.

(Added by Stats. 2016, Ch. 847, Sec. 2. (SB 1380) Effective January 1, 2017.)



# CITY COUNCIL AGENDA REPORT

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**DATE:** AUGUST 15, 2022                      **FILE I.D.:** EDD100/MHA100  
**SECTION:** CONSENT - RESOLUTIONS                      **DEPT.:** ECONOMIC DEV./MHA  
**ITEM NO.:** 1    **PREPARER:** M FUENTES

**SUBJECT:** CONSIDER ADOPTION OF RESOLUTION NO. 22-3342 APPROVING AGREEMENT NO. 22-26, AN AFFORDABLE HOUSING AGREEMENT BETWEEN THE CITY, MHC, AND MHA; AUTHORIZING THE TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 5072 MORENO STREET TO THE MONTCLAIR HOUSING AUTHORITY; AND DECLARING THE REAL PROPERTY TO BE EXEMPT SURPLUS LAND

CONSIDER ADOPTION OF MONTCLAIR HOUSING AUTHORITY RESOLUTION NO. 22-01 APPROVING AGREEMENT NO. 22-26, AN AFFORDABLE HOUSING AGREEMENT, AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY FROM THE CITY OF MONTCLAIR

CONSIDER ADOPTION OF MONTCLAIR HOUSING CORPORATION RESOLUTION NO. 22-01 APPROVING AGREEMENT NO. 22-26, AN AFFORDABLE HOUSING AGREEMENT

CONSIDER AUTHORIZATION OF A \$40,000 APPROPRIATION FROM THE HOUSING TRUST FUND FOR REHABILITATION OF THE PROPERTY LOCATED AT 5072 MORENO STREET

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**REASON FOR CONSIDERATION:** Proposed Agreement No. 22-26 is an Affordable Housing Agreement between the City of Montclair (City), the Montclair Housing Authority (MHA), and the Montclair Housing Corporation (MHC) for the conveyance of real property located at 5072 Moreno Street (Property) and the subsequent leasing and operations of said Property as an affordable housing unit.

Proposed Resolution No. 22-3342 would approve entering into Agreement No. 22-26 and would authorize the transfer of Property from the City to the MHA.

Proposed MHA Resolution No. 22-01 would approve entering into Agreement No. 22-26 and accept the transfer of Property from the City to the MHA.

Proposed MHC Resolution No. 22-01 would approve entering into Agreement No. 22-26.

A copy of the proposed resolutions and agreement are attached for review and consideration.

**BACKGROUND:** In June 1987, the former Redevelopment Agency (RDA) Board of Directors adopted the *Central Avenue Single-family Acquisition Policy* (Policy) authorizing staff to make purchase offers on single-family residences along the Central Avenue corridor, subject to the former Redevelopment Agency Board of Directors' approval.

The Policy was later expanded to include areas along Central Avenue or in high visibility locations. Pursuant to the Policy, a total of 17 single-family homes were purchased by the former RDA before its dissolution.

With the dissolution of community redevelopment agencies in 2011 (ABX1 26) *California Supreme Court's decision in California Redevelopment Association v. Matosantos*, the City Council elected to continue the Policy of the former RDA of acquiring single-family residences along the Central Avenue corridor or in locations of high visibility and further expanded the Policy to included residences along all of the City's major corridors.

The properties formerly owned by the RDA were transferred to the Montclair Housing Authority (MHA), the successor housing entity, and are currently renting to low- to-moderate-income families and are managed by the Montclair Housing Corporation (MHC). MHC is a nonprofit public-benefit corporation organized to increase, improve, and preserve affordable housing in the City of Montclair.

The rents and other income from the MHC belong to the MHA; however, they are granted to the MHC for use in covering expenses of operating the various housing units. The amount of rent collected from renters is established by the State Department of Housing and Community Development and varies based on income levels.

### ***5072 Moreno Avenue***

At its meeting on March 16, 2020, the City Council approved Agreement No. 20-21, a Purchase and Sale Agreement with Dolores Casa Fimbres for a single-family residence located at 5072 Moreno Street (Property).

The subject Property is located on a highly visible and desirable portion of Moreno Street, directly north of Montclair Place, thereby meeting the criteria established in the City Council's Policy to acquire properties along the City's major corridors and areas of high visibility.

The Property was built in 1962, and the lot area is 8,449 square feet. The dwelling unit is 1,458 square feet, with three bedrooms and two bathrooms. Due to the age of the Property and in order to bring the Property up to code, staff is recommending several improvements to the residential unit. The bulk of the improvements to the Property would address a general property clean-up, paint, fence replacement, bathroom updates, and new landscaping. In addition, due to current drought conditions, a simple water-efficient landscape-planting design for the rear and front yards is also recommended.

The proposed improvements alone would have an immediate positive impact on the neighborhood. Staff is requesting that a \$40,000 appropriation from the Montclair Housing Corporation Fund be authorized to fund the recommended repairs to the Property.

### ***Agreement No. 22-26 Affordable Housing Agreement***

To meet the City's Regional Housing Needs Assessment (RHNA), a representation of future housing needs for all income levels in a region, staff recommends the Property be operated as a rental unit made available to low-to-moderate-income persons.

As such, staff has prepared Agreement No. 22-26, an Affordable Housing Agreement by and between the City, MHA, and MHC.

Proposed Agreement No. 22-26 contains language related to the conveyance of the Property, compliance with applicable laws, use of the property, remedies, and general provisions. The more salient points of proposed Agreement No. 22-26 relate to the conveyance of fee title of Property from the City to the MHA and leasing of the Property

from the MHA to the MHC for the day-to-day operation of the Property, as well as the rehabilitation and rental of the Property to low-to-moderate-income persons.

Proposed Resolution No. 22-3342 would approve entering into Agreement No. 22-26 and authorize the transfer of property from the City to the MHA.

Proposed MHA Resolution No. 22-01 would approve entering into Agreement No. 22-26 and accept the transfer of Property from the City to the MHA.

Proposed MHC Resolution No. 22-01 would approve entering into Agreement No. 22-26.

**FISCAL IMPACT:** Adopting Agreement No. 22-26 would produce no fiscal impact on the City of Montclair General Fund.

Staff is recommending authorization of \$40,000 from the Montclair Housing Corporation to cover estimated costs for rehabilitation of the property.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3342 approving Agreement No. 22-26, an Affordable Housing Agreement between the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation; authorizing the transfer of certain real property located at 5072 Moreno Street to the Montclair Housing Authority; and declaring the real property to be exempt surplus land.

Staff recommends the Montclair Housing Authority Commissioners adopt Resolution No. 22-01 approving Agreement No. 22-26, an Affordable Housing Agreement, and accepting the transfer of certain real property located at 5072 Moreno Street from the City of Montclair.

Staff recommends the Montclair Housing Corporation Board of Directors take the following actions:

1. Adopt Resolution. No. 22-01 approving Agreement No. 22-26, an Affordable Housing Agreement.
2. Authorize a \$40,000 appropriation from the Housing Trust Fund for rehabilitation of the property located at 5072 Moreno Street.



**AFFORDABLE HOUSING AGREEMENT**

by and among the

**MONTCLAIR HOUSING AUTHORITY**

and the

**CITY OF MONTCLAIR**

and the

**MONTCLAIR HOUSING CORPORATION**

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ATTACHMENT NO. 3 – CITY DEED

## AFFORDABLE HOUSING AGREEMENT

**THIS AFFORDABLE HOUSING AGREEMENT** (the “Agreement”) is hereby entered into as of August 15, 2022 (the “Date of Agreement”), by and among the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority”), the and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator”).

### *RECITALS*

A. Authority is a housing authority duly established and operating as a local housing authority pursuant to the California Housing Authority Law, Chapter 1 of Part 2 of Division 24 of the California Health and Safety Code (“Housing Authority Law” or “HAL”).

B. City is the owner of that certain single family house located within the corporate limits of the City of Montclair, located at 5072 Moreno Street, Montclair, California (the “Property” or the “House”). The Property is further described in the Legal Description which is attached hereto as Attachment No. 1.

C. City desires to convey to Authority the Property and Authority desires to acquire the Property from the City as provided herein.

D. Upon acquiring the Property, Authority intends to lease the Property to the Operator for the operation of the Property as an affordable rental housing resource for households of “Low Income” as defined below.

E. The transaction contemplated by this Agreement is in the vital and best interest of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE**, the parties hereto agree as follows:

**1. DEFINITIONS.** The following terms shall have the following definitions for the purpose of this Agreement:

**“Additional Rent”** is defined in Section 2.2 hereof.

**“Affordable Rent”** is defined in Section 4.2(f) hereof.

**“Authority”** means the Montclair Housing Authority, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

**“Agreement”** means this Affordable Housing Agreement among Authority, City, and Operator.

**“Authority Executive Director”** means the Executive Director of the Authority or his or her designee.

“**City**” means the City of Montclair, California, a California municipal corporation.

“**City Code**” means and refers to the City of Montclair Linda Municipal Code as revised from time to time.

“**City Deed**” means a grant deed substantially in the form of Attachment No. 3.

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

“**Event of Default**” means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 5.1 hereof.

“**House**” means the single family house which is located on and constitutes part of the Property.

“**Housing Authority Law**” or “**HAL**” has the meaning set forth therefor in Recital A.

“**Low Income Household**” shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as determined pursuant to Health and Safety Code Section 50079.5.

“**Net Profits**” shall mean all gross income from the Property, including without limitation rents and interest on security deposits, less the sum of the Operating Expenses.

“**Operating Expenses**” shall mean actual, reasonable and customary costs, fees and expenses directly incurred and attributable to the operation, maintenance, and management of the Property. The Operating Expenses shall not include non-cash expenses, including without limitation, depreciation.

“**Operator**” means the Montclair Housing Corporation, a California nonprofit public benefit corporation.

“**Parties**” means, collectively, City, Authority, and Operator.

“**Property**” means the single family house in the City of Montclair located at 5072 Moreno Street, Montclair, California, and described in the Legal Description.

“**Property Value**” means the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Property Value is mutually believed by each of the Parties to represent the fair market value of the Property as of the Date of Agreement.

“**Redevelopment Plan**” means the redevelopment plan adopted by the City for Redevelopment Project No. V (the “Redevelopment Project”) as heretofore amended.

## **2. CONVEYANCE OF THE PROPERTY.**

**2.1 Conveyance of Fee Title.** City agrees to convey to Authority the Property by the City Deed. The purchase price payable by Authority to City in consideration of the conveyance of the Property shall be One Dollar (\$1.00) (the “Authority Purchase Price”); provided that City may waive receipt of Authority Purchase Price. Upon request therefor by Authority, City will, in connection

with the conveyance of the Property, provide to Authority an owner's standard ALTA policy of title insurance as to the Property by a title insurer mutually acceptable to City an Authority, with the policy to be based upon the Property Value (the "Authority Title Policy"). Any and all documentary transfer taxes, recording fees, escrow charges, premiums for title insurance, and any costs associated with the conveyance of the Property to Authority shall be borne by City.

**2.2 Lease Terms.** Subject to the satisfaction of all of the conditions precedent to commencement of the Lease set forth in Section 2.3 hereof, the Authority shall lease the Property to the Operator for a fifteen (15) year term at a base rental amount of One Dollar (\$1.00) per year, together with the "Additional Rent" as set forth below. The terms and conditions of such lease shall be set forth in a "Lease" to be executed by the Authority and the Operator in the form of Attachment No. 2 which is attached hereto and incorporated herein.

At the end of each operating year, the Operator shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to Net Profits, which equals total gross operating revenue less the Operating Expenses for that year. If total gross revenue from the Property for that year is less than the Operating Expenses, no Additional Rent shall be payable and the Operator shall be responsible for such additional costs from its own funds, and shall not be entitled to additional compensation from the Authority or be entitled to reduce the required level of services. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Operator which in any manner relate to the expenses and revenues of the Property under this Agreement and the Operator's obligations hereunder. The Operator's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Operator shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

**2.3 Conditions Precedent to Commencement of Lease.** Prior to and as conditions to the Authority's execution of and the commencement of the Lease: (i) City shall have conveyed title to the Property to Authority; (ii) if requested by Authority, City shall have caused to be delivered to Authority the Authority Title Policy; (iii) Operator shall have executed the Lease; and (iv) Operator shall have provided proof of insurance (certificates) conforming to Section 3.7 of this Agreement.

**3. COMPLIANCE WITH LAWS.** Operator shall carry out the operation of the Property in conformity with all applicable laws, including all applicable state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

#### 4. USE OF THE PROPERTY.

**4.1 Use in Conformance with Agreement.** The Operator covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that, during the term of this Agreement, the Operator, such successors and such assignees, shall use, operate and maintain the Property in conformity with this Agreement and shall devote the Property to the uses specified in this Agreement for the periods of time specified therein.

#### **4.2 Affordable Rental Housing.**

(a) Number of Units. Upon the commencement of the Lease, the Operator agrees to make available, restrict occupancy to, and rent the House to Low Income Households, at an Affordable Rent.

(b) Lease Requirements. Prior to rental of the House within the Property, the Operator shall submit a standard lease form to the Authority for the Authority's approval. The Authority Executive Director, or designee, shall reasonably approve such lease form upon finding that such lease form is consistent with this Agreement. The Operator shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

(c) Duration of Affordability Requirements. The House shall be subject to the requirements of this Section 4.2 for a period coextensive with the term of the Lease. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the House may be raised to a market rate rent at the end of the Affordability Period.

(d) Selection of Tenants. The House shall be leased to tenants selected by the Operator who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Operator names of persons who have expressed interest in renting the House. The Operator shall adopt a tenant selection system, which shall be approved by the Authority Executive Director, or designee. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

(e) Income of Tenants. Prior to the rental or lease of the House to tenants, and annually thereafter, the Operator shall obtain an income certification from each tenant of the Property. The Operator shall verify the income certification of the tenant in one or more of the following methods:

(1) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.

(2) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.

(3) obtain an income verification certification from the employer of the tenant.

(4) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.

(5) obtain a credit report from a commercial credit reporting agency.

(6) obtain an alternate form of income verification reasonably requested by the Operator, if none of the above forms of verification is available to the Operator.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified until such time as the person or family's income is redetermined and the person or family is determined by the Operator to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Operator's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent such House and shall be given a written notice which requires such tenant to vacate the House within sixty (60) days, and the Operator shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Operator shall annually submit to the Authority a certification that the House is actually occupied by a Low Income Household in the form which is provided by the Authority.

(f) Determination of Affordable Rent for the Property. The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the House shall be established at not greater than the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the House or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). For purposes of this Section 4.2, "rent" means the total of monthly payments for (a) use and occupancy of the House and land and facilities associated therewith, (b) any separately charged fees or service charges assessed by the Operator which are required of all tenants, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Operator. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. Upon the approval of the Authority or the Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

**4.3 Occupancy Standards.** Occupancy of the House shall be limited to five (5) persons.

**4.4 Management and Maintenance.** The Operator shall manage and maintain the Property in conformity with the City Code. The following standards shall be complied with by Operator and its maintenance staff, contractors or subcontractors:

(a) Operator shall maintain the Property in a safe and sanitary fashion and in first class condition for single family houses of their age and type.

(b) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(c) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(d) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(e) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(f) Operator shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Operator to and the Operator shall hire a management company acceptable to the Authority to manage the Property. If, at any time, the Operator or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Operator shall pay such costs as are reasonably incurred for such maintenance.

**4.5 Rights of Access.** The Authority, for itself and for the City and other public agencies, at their sole risk and expense, shall have the right to inspect the Property. Any such inspection shall be made only after reasonable notice to Operator. Upon receipt of such notice, the Operator agrees to cooperate with the Authority in making the Property available for inspection by the Authority and/or City. Operator acknowledges and agrees that in the event that if for any reason the Operator fails to consent to such entry or inspection, the Authority may obtain an administrative



inspection warrant or take such other legal actions as may be necessary to gain entry to and inspect the Property. Authority shall indemnify and hold Operator harmless from any costs, claims, damages or liabilities pertaining to any entry.

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

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

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

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

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

(c) In contracts: “There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises

subject to this agreement nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises.”

The covenants established in this Agreement and the Lease for the Property shall, without regard to technical classification and designation, be binding for the benefit and in favor of the Authority, its successors and assigns, the City and any successor in interest to the Property. The covenants against discrimination shall remain in effect in perpetuity. However, nothing in this Section 4.6 shall give the Operator any additional rights to convey a fee or leasehold interest in the Property except as otherwise authorized by this Agreement.

**4.7 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** The covenants established in this Agreement shall, without regard to technical classification and designation, be binding upon and for the benefit and in favor of the Operator and the Authority, their respective successors and assigns, as to those covenants which are for their benefit. The covenants contained in this Agreement shall remain in effect until the expiration of the Affordability Period. The covenants against discrimination shall remain in perpetuity. The Authority is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the covenants running with the land have been provided. The Agreement and the covenants shall run in favor of the Authority, without regard to whether the Authority has been, remains or is an owner of any land or interest therein in the Property or in the Redevelopment Project area. The Authority shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled.

## **5. REMEDIES.**

**5.1 Events of Default.** An “Event of Default” shall occur under this Agreement when there shall be a material breach of any condition, covenant, warranty, promise or representation contained in this Agreement and such breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if such breach cannot reasonably be cured within such thirty (30) day period, commencing the cure of such breach within such thirty (30) day period and thereafter diligently proceeding to cure such breach; provided, however, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Agreement, the specific provision shall control.

**5.2 Remedies.** The occurrence of any Event of Default shall give the nondefaulting party the right to proceed with any and all remedies set forth in this Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions of this Agreement, and the right to terminate this Agreement.

**5.3 Force Majeure.** Subject to the party’s compliance with the notice requirements as set forth below, performance by either party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended, where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires,

assaults, acts of God, acts of the public enemy, epidemics, pandemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, acts or omissions of the other party, acts or failures to act of any public or governmental entity (except that the Authority's acts or failure to act shall not excuse performance of the Authority hereunder), or any other causes beyond the control and without the fault of the party claiming an extension of time to perform. An extension of the time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause.

In addition to the foregoing, following the acquisition of the Property by Authority, the Authority Executive Director shall have the authority to extend times for performance by up to one hundred eighty (180) days in the aggregate without necessity of further action by the governing board of the Authority.

**5.4 Attorneys' Fees.** In addition to any other remedies provided hereunder or available pursuant to law, if either party brings an action or proceeding to enforce, protect or establish any right or remedy hereunder, the prevailing party shall be entitled to recover from the other party its costs of suit, including without limitation expert witness fees, and reasonable attorneys' fees.

**5.5 Remedies Cumulative.** No right, power, or remedy given to the Authority by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the Authority by the terms of any such instrument, or by any statute or otherwise against Operator and any other person.

**5.6 Waiver of Terms and Conditions.** The Authority may, in its sole discretion, waive in writing any of the terms and conditions of this Agreement. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition.

**5.7 Non-Liability of Authority Officials and Employees.** No member, official, employee or agent of the City or Authority shall be personally liable to Operator, or any successor in interest, in the event of any default or breach by the Authority or for any amount which may become due to Operator or its successors, or on any obligations under the terms of this Agreement.

## **6. GENERAL PROVISIONS.**

**6.1 Time.** Time is of the essence in this Agreement.

**6.2 Notices.** Any notice requirement set forth herein shall be deemed to be satisfied three (3) days after mailing of the notice first-class United States certified mail, postage prepaid, or by personal delivery, addressed to the appropriate party at the following addresses:

Authority: Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

Lessee: Montclair Housing Corporation  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

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

**6.3 Representations and Warranties of Operator.** Operator hereby represents and warrants to the Authority as follows:

(a) Organization. Operator is a duly organized, validly existing nonprofit corporation in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Operator. Operator has full power and authority to execute and deliver this Agreement and to make and accept the borrowings contemplated hereunder, to execute and deliver the documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Valid Binding Agreement. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of Operator enforceable against it in accordance with their respective terms.

(d) Pending Proceedings. Operator is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of Operator, threatened against or affecting Operator, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to Operator, materially affect Operator's ability to perform its obligations hereunder.

**6.4 Limitation Upon Change in Ownership, Management and Control of Operator.**

(a) Prohibition. The identity and qualifications of Operator are of particular concern to the Authority. It is because of this identity and these qualifications that the Authority has entered into this Agreement with Operator. No voluntary or involuntary successor in interest of Operator shall acquire any rights or powers under this Agreement by assignment or otherwise, nor shall Operator make any total or partial sale, transfer, conveyance, encumbrance to secure financing, assignment or lease of the whole or any part of the Property without the prior written approval of the Authority Executive Director, which approval may be granted, conditionally granted, or denied at the sole and absolute discretion of the Authority Executive Director; provided that the rental of the Property by Operator to a Low Income household at Affordable Rent in conformity with the Lease shall not require the specific approval by the Authority Executive Director.

(b) Successors and Assigns. This Agreement shall run with the land, and all of the terms, covenants and conditions of this Agreement shall be binding upon Operator and the permitted successors and assigns of Operator. Whenever the term “Operator” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**6.5 No Third Parties Benefited.** This Agreement is made and entered into for the sole protection and benefit of the Authority, its successors and assigns, City, successors and assigns, and Operator, its permitted successors and assigns, and no other person or persons shall have any right of action hereon.

**6.6 Partial Invalidity.** If any provision of this Agreement shall be declared invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired.

**6.7 Governing Law.** This Agreement and other instruments given pursuant hereto shall be construed in accordance with and be governed by the laws of the State of California. Any references herein to particular statutes or regulations shall be deemed to refer to successor statutes or regulations, or amendments thereto.

**6.8 Amendment.** This Agreement may not be changed orally, but only by agreement in writing signed by Operator and the Authority.

**6.9 Approvals.** Where an approval or submission is required under this Agreement, such approval or submission shall be valid for purposes of this Agreement only if made in writing. Where this Agreement requires an approval or consent of the Authority, such approval may be given on behalf of the Authority by the Authority Executive Director or his or her designee. The Authority Executive Director or his or her designee is hereby authorized to take such actions as may be necessary or appropriate to implement this Agreement, including without limitation the execution of such documents or agreements as may be contemplated by this Agreement. The Authority Executive Director is authorized to execute amendments of this Agreement so long as such amendments do not materially increase the costs to be incurred by the Authority hereunder or materially decrease the revenues to be received by the Authority hereunder.

**IN WITNESS WHEREOF**, the Authority, City, and the Operator have executed this Agreement as of the date set forth above.

**MONTCLAIR HOUSING AUTHORITY,**  
a public body corporate and politic

By: \_\_\_\_\_  
Authority Executive Director

**CITY OF MONTCLAIR,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**MONTCLAIR HOUSING CORPORATION,**  
a California nonprofit public benefit corporation

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

**ATTACHMENT NO. 1**  
**LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF San Bernardino STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 10 OF TRACT NO. 6387, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGES 76 AND 77, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A.P.N.: 1008-163-19-0-000



**ATTACHMENT NO. 2**

**LEASE**

By and Between

**THE MONTCLAIR HOUSING AUTHORITY**

and

**MONTCLAIR HOUSING CORPORATION**

## **LEASE**

**THIS LEASE** (the “Lease”) is made as of August 15, 2022, by and between the **MONTCLAIR HOUSING AUTHORITY**, a public body, corporate and politic (the “Authority” or “Lessor”), and **MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation (the “Operator” or “Lessee”).

### **SECTION 1. SUBJECT OF LEASE.**

**1.1 Purpose of the Lease.** The purpose of this Lease is to effectuate the Affordable Housing Agreement by and among the Authority, the City of Montclair, a municipal corporation (the “City”), and the Operator dated August 15, 2022 (the “Agreement”), by providing for the lease of the “Property” (as hereinafter defined) within the Redevelopment Project area to Lessee and the sublease of the Property to Low Income Persons. The Agreement, which is available in the offices of the Authority as a public record, is incorporated herein by reference and made a part hereof as though fully set forth herein.

**1.2 The Redevelopment Plan.** As of the “Commencement Date” (as hereinafter defined), the “Property” (as hereinafter defined) is in compliance with the Redevelopment Plan for the Redevelopment Project.

### **SECTION 2. LEASE OF THE PROPERTY.**

The Authority, for and in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Lessee to be paid, kept, performed and observed by Lessee, hereby leases to Lessee, and Lessee hereby leases from Authority, that certain real property consisting of a single family house in the City of Montclair (the “City”) located at 5072 Moreno Street (the “House”), and having the legal description in the “Legal Description” attached hereto as Exhibit A and incorporated herein by this reference. Except as expressly provided to the contrary in this Lease, reference to the Property is to the described land, inclusive of any improvements now or hereafter located on the land.

### **SECTION 3. LEASE TERM.**

Lessee shall lease the Property from Authority and Authority shall lease the Property to Lessee for a term commencing on August 15, 2022 (the “Commencement Date”) and continuing until [August 15, 2037] (the “Term”), unless sooner terminated as provided for herein. The term “Lease Year” shall mean a period commencing on the Commencement Date or an anniversary thereof and continuing for one full calendar year thereafter.

### **SECTION 4. USE OF THE PROPERTY.**

**4.1 Use of the Property.** Lessee covenants and agrees for itself, its successors and assigns, that during the Term, the Property shall be devoted to those uses as set forth in the Agreement and the Redevelopment Plan.

**4.2 Management.** Lessee shall manage or cause the Property to be managed in a prudent and business-like manner, consistent with first-class single family rental housing in San Bernardino County, California.

Lessee may contract with a management company or manager to operate and maintain the Property in accordance with the terms of this Lease; provided, however, that the selection and hiring of such management company shall be subject to approval by Authority, or its Executive Director. Lessee may act as manager. Approval of a management company or manager by Authority shall not be unreasonably withheld. If, at any time, the management company is not performing to the reasonable satisfaction of the Authority, or its Executive Director or the City Manager of the City, and said condition is not corrected after expiration of ninety (90) days from the date of written notice from the Authority, the Authority may direct the Lessee to, and the Lessee shall, terminate immediately the management contract. Notwithstanding the above, Lessee shall use its best efforts to correct any defects in management at the earliest feasible time and, if necessary, to replace the management company prior to the elapsing of such time period.

**4.3 Only Lawful Uses Permitted.** Lessee shall not use the Property for any purpose that is in violation of any law, ordinance or regulation of any federal, state, county or local governmental agency, body or entity. Furthermore, Lessee shall not maintain or commit any nuisance, as now or hereafter defined by any applicable statutory or decisional law, on the Property, or any part thereof.

## **SECTION 5. RENT.**

**5.1 Net Lease.** It is the intent of the parties hereto that the rent provided herein shall be absolutely net to Authority and that Lessee shall pay all costs, charges and expenses of every kind and nature against the Property which may arise or become due during the Term and which, except for execution hereof, would or could have been payable by Authority.

### **5.2 Rent.**

(A) During the Term of this Lease, Lessee agrees to pay in advance, on the Commencement Date and thereafter on the first day of each "Lease Year" (as hereinafter defined), rent in the amount of One Dollar (\$1.00). The parties understand and acknowledge that the primary consideration for this Lease is the performance of the covenants set forth in this Lease and the Agreement, particularly (without limitation, however) the covenants to rent the units to low- and moderate income tenants at an affordable rent pursuant to Section 6 hereof and Section 4.2 of the Agreement. As used herein, a "Lease Year" shall consist of twelve (12) consecutive calendar months ending on the anniversary (the "Anniversary Date") of the day immediately preceding the Commencement Date.

(B) During the Term of this Lease, Lessee agrees to pay at the end of each Lease Year the "Additional Rent," as herein defined. At the end of each Operating Year, the Lessee shall calculate total gross operating revenue for that year, and shall thereupon pay to the Authority as "Additional Rent" an amount equal to total gross operating revenue less the operating costs for that year. If total gross operating revenue for that year is less than operating costs, no Additional Rent shall be payable and the Lessee and the Authority shall negotiate in good faith for the Authority to provide additional compensation to cover such deficit. The Authority and its authorized representatives shall, at all times, have access for the purpose of audit or inspection to any and all books, documents, papers, records, property, and premises of the Lessee which in any manner relate to the expenses and revenues

of the Property under this Lease and the Lessee's obligations hereunder. The Lessee's staff shall cooperate fully with authorized auditors when they conduct audits and examinations of Authority funded programs. Within thirty (30) days of the submittal of such audit report, the Lessee shall provide a written response to all conditions or findings reported in such audit report. The response must discuss each condition or finding and set forth a proposed resolution, including a schedule for correcting any deficiency. All conditions or correction actions shall take place within six (6) months after receipt of the audit report unless the Authority Executive Director or designee authorizes an extension of time to submit such corrections.

**5.3 Payment of Rent.** All rent that becomes due and payable pursuant to this Lease shall be paid to the Authority at the address of the Authority listed in Section 26.7 or such other place as the Authority may from time to time designate by written notice to the Lessee without notice or demand, and without setoff, counterclaim, abatement, deferment, suspension or deduction. Except as expressly provided herein, under no circumstances or conditions, whether now existing or hereafter arising, or whether beyond the present contemplation of the parties, shall the Authority be expected or required to make any payment of any kind whatsoever or to perform any act or obligation whatsoever or be under any obligation or liability hereunder or with respect to the Property.

## **SECTION 6. AFFORDABLE HOUSING REQUIREMENTS**

**6.1 Affordable Unit.** The Lessee agrees to make available, restrict occupancy to, and rent the House to "Low Income Households" at the rents established pursuant to Section 6.6 hereof. "Low Income Household" shall mean a household earning not greater than eighty percent (80%) of San Bernardino County median income as further set forth in California Health and Safety Code Section 50079.5.

**6.2 Lease Requirements.** Prior to rental of the Property, Lessee shall submit a standard lease form to the Authority for Authority's approval. The Authority shall approve such lease form upon finding that such lease form is consistent with this Lease and the Agreement. The Lessee shall enter into a lease, in the form approved by the Authority, with each tenant of the House.

**6.3 Duration of Affordability Requirements.** The Property shall be subject to the requirements of this Section 6 for a period coextensive with the term of this Lease beginning on the Commencement Date. The duration of this requirement shall be known as the "Affordability Period." All tenants residing in the House during the last two (2) years of the Affordability Period shall be given notice by the Lessee at least once every six (6) months of the expiration date of this requirement, and that the rent payable on the Property may be raised to a market rate rent at the end of the Affordability Period.

**6.4 Selection of Tenants.** The Property shall be leased to tenants selected by the Lessee who meet all of the requirements provided herein. The Authority may, from time to time, assist in the leasing of the House by providing to the Lessee names of persons who have expressed interest in renting the House. Lessee shall adopt a tenant selection system, which shall be approved by the Authority. The tenant selection system shall include, without limitation, a method for investigation of the credit history of proposed tenants through obtaining a credit report on the proposed tenant. Highest priority in the selection of tenants shall be given to those applicants who have been displaced by Authority projects, if any.

**6.5 Income of Tenants.** Prior to the rental or lease of each of the House to a tenant, and annually thereafter, the Lessee shall obtain an income certification from the tenant of the Property. The Lessee shall verify the income certification of the tenant in one or more of the following methods:

- (A) obtain two (2) paycheck stubs from the tenant's two (2) most recent pay periods, if any.
- (B) obtain a true copy of an income tax return from the tenant for the most recent tax year in which a return was filed.
- (C) obtain an income verification certification from the employer of the tenant.
- (D) obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the tenant receives assistance from such agencies.
- (E) obtain a credit report from a commercial credit reporting agency.
- (F) obtain an alternate form of income verification reasonably requested by the Lessee, if none of the above forms of verification is available to the Lessee.

A person or family who at the time of income certification qualified as a Low Income Household shall continue to be deemed so qualified, until such time as the person or family's income is redetermined and the person or family is determined by the Lessee to no longer be so qualified, even if such person or family's income has subsequently increased to an amount above the applicable income level. Upon the Lessee's determination that the tenant is no longer qualified as a Low Income Household, such tenant shall no longer be eligible to rent the Property and shall be given a written notice which requires such tenant to vacate the Property within sixty (60) days, and the Lessee shall provide assistance to such tenants in finding another appropriate rental unit in the vicinity. The tenant lease shall contain the above provisions. In addition, the Lessee shall annually submit to the Authority a certification that the House is actually occupied by Low-Income Households in such form as may be provided by the Authority.

**6.6 Determination of Affordable Rent for the Property.** The House shall be rented at an "Affordable Rent" to be established by the Authority as provided herein. The maximum monthly rental amount for the Property shall be established at the lesser of (a) fair market rent, as reasonably determined by the Operator, or (b) thirty percent (30%) of sixty percent (60%) of San Bernardino County median income for a household size appropriate for the unit or, if greater, the amount determined pursuant to Health and Safety Code section 50053(b)(3). Household size appropriate to the unit shall mean two persons for a one bedroom House, three persons for a two bedroom House, four persons for a three bedroom House, and five persons for a four bedroom House. The rents of the Property may be increased once per year, regardless of when particular tenants commenced occupancy of the House. The maximum monthly rental amount for the House shall include a reasonable utilities allowance to be determined by the Authority, which utilities allowance shall be set at an amount which will cover the projected charge for all utilities (whether paid for by Lessee or paid directly by the individual tenant), including gas and electrical service, water, sewer and garbage collection, but excluding telephone service and cable television. The Authority may in its discretion base the utilities allowance on a utilities allowance adopted in connection with the Section 8 program administered by the United States Department of Housing and Urban Development. Upon the approval of the Authority

or Authority Executive Director, rents may be established at amounts which are lower than the maximum monthly rental amounts set forth above.

## **SECTION 7. UTILITIES AND TAXES.**

**7.1 Utilities.** Lessee shall pay or cause to be paid by the tenants all charges for gas, electricity, water, sewer, garbage collection, cable television, and other utilities furnished to the House.

### **7.2 Real Estate Taxes.**

(A) As used herein, the term “real estate taxes” shall mean all real estate taxes, assessments for improvements to the House, municipal or county water and sewer rates and charges which shall be levied against the House, or any interest therein, and which become a lien thereon and accrues during the Term.

(B) The Property shall be assessed and taxed in the same manner as privately owned property, provided, however, that Lessee may apply for and obtain a full or partial exemption from property taxes. The Authority shall provide notice to the San Bernardino County Assessor within thirty (30) days of the commencement of this Lease as required by Health and Safety Code Section 33673.1. Lessee shall pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto for the nonpayment thereof, all real estate taxes levied against any and all interests in the Property during the Term, and not merely the assessed value of the leasehold interest in the Property.

(C) Any real estate taxes which are payable by Lessee hereunder shall be prorated between Authority and Lessee as of the Commencement Date and then again at the expiration or earlier termination of the Term.

(D) Lessee shall have the right to apply for the “welfare exemption” and any other applicable exemption from real property taxes, and shall further have the right to contest the amount or validity of any real estate taxes, in whole or in part, by appropriate administrative and legal proceedings, without any costs or expense to Authority. Lessee may postpone payment of any such contested real estate taxes pending the prosecution of such proceedings and any appeals so long as such proceedings shall operate to prevent the collection of such real estate taxes and the sale of the Property to satisfy any lien arising out of the nonpayment of the same, and Lessee furnishes a bond to Authority securing the payment of the same in the event a decision in such contest shall be adverse to Lessee.

**7.3 Personal Property Taxes.** Lessee covenants and agrees to pay before delinquency all personal property taxes, assessments and liens of every kind and nature upon all personalty as may be from time to time situated within the Property.

## **SECTION 8. OWNERSHIP OF IMPROVEMENTS, FIXTURES AND FURNISHINGS.**

The Property shall, during the Term, be and remain the property of the Authority. Upon termination of this Lease, whether by expiration of the Term or otherwise, all fixtures and furnishings within the Property shall, without compensation to Lessee, be Authority’s property, free and clear of all claims to or against them by Lessee or any third person, firm or entity.

## **SECTION 9. INDEMNIFICATION: FAITHFUL PERFORMANCE.**

Lessee shall not suffer or permit any liens to be enforced against the fee simple estate as to the Property, nor against Lessee's leasehold interest therein by reason of work, labor, services or materials supplied or claimed to have been supplied to Lessee or anyone holding the Property, or any part thereof, through or under Lessee, and Lessee agrees to defend, indemnify and hold Authority harmless against such liens. If any such lien shall at any time be filed against the Property, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity, in whole or in part, of any such lien by appropriate proceedings but in such event, Lessee shall notify Authority and promptly bond such lien in the manner authorized by law with a responsible surety company qualified to do business in the State of California or provide other security acceptable to Authority. Lessee shall prosecute such proceedings with due diligence. Nothing in this Lease shall be deemed to be, nor shall be construed in any way to constitute, the consent or request of Authority, express or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Property or any part thereof. Prior to commencement of any repair or alteration to the Property, Lessee shall give Authority not less than thirty (30) days advance notice in writing of intention to begin said activity in order that nonresponsibility notices may be posted and recorded as provided by State and local laws; provided that a shorter notice may be given in cases of emergency.

## **SECTION 10. MAINTENANCE AND REPAIR.**

Lessee agrees to assume full responsibility for the management, operation and maintenance of the Property throughout the Term without expense to Authority, and to perform all repairs and replacements necessary to maintain and preserve the Property in a clean and safe condition reasonably satisfactory to Authority and in compliance with all applicable laws. Lessee agrees that Authority shall not be required to perform any maintenance, repairs or services or to assume any expense in connection with the Property. Lessee hereby waives all rights to make repairs or to cause any work to be performed at the expense of Authority as provided for in Section 1941 and 1942 of the California Civil Code. The Lessee shall manage and maintain the Property in conformity with the Montclair Municipal Code.

The following standards shall be complied with by Lessee and its maintenance staff, contractors or subcontractors:

(A) Lessee shall maintain the Property in a safe and sanitary fashion in a first class condition.

(B) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing, edging, and trimming of grass; tree and shrub pruning; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance and safe road conditions and visibility, and optimum irrigation coverage; replacement, as needed, of all plant materials; control of weeds in all planters, shrubs, lawns, ground covers, or other planted areas; and staking for support of trees.

(C) Clean-up maintenance shall include, but not be limited to: maintenance of all private paths, parking areas, driveways and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to

mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(D) All maintenance work shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(E) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied only by persons possessing valid California applicators licenses, and in strict accordance with all governing regulations. Precautionary measures shall be employed recognizing that all areas are open to public access.

(F) Lessee shall make such capital repairs to the Property as are necessary, including the following: carpet and drape replacement; appliance replacement; exterior painting, hot water heater replacement; plumbing fixtures replacement, including tubs and showers, toilets, lavatories, sinks, faucets; air conditioning and heating replacement; asphalt repair and replacement, and seal coating; roofing repair and replacement; landscape tree replacement and irrigation pipe and controls replacement; gas line pipe replacement; and lighting fixture replacement.

Management and maintenance shall be overseen by the Authority or its designee and, if the above standards are breached, after notice and opportunity to cure within the time set forth in this paragraph, the Authority or its designee may in its reasonable discretion direct the Lessee to and the Lessee shall hire a management company acceptable to the Authority to manage the Property. If, at any time, the Lessee or the management company fails to adequately maintain such areas, and such condition is not corrected immediately upon notice of an imminent threat to health and safety or after expiration of thirty (30) days from the date of written notice from the Authority for all other violations, the Authority may (but shall not be obligated to) perform the necessary maintenance and Lessee shall pay such costs as are reasonably incurred for such maintenance.

## **SECTION 11. ENVIRONMENTAL MATTERS.**

**11.1 Definitions.** For the purposes of this Lease, unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified:

(A) The term “Hazardous Materials” shall mean (i) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (ii) any “hazardous substance” as defined by the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Sections 25300, *et seq.*), as amended from time to time, and regulations promulgated thereunder; (iii) asbestos; (iv) polychlorinated biphenyls; (v) petroleum, oil, gasoline (refined and unrefined) and their respective by products and constituents; and (vi) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any “Governmental Requirements” (as defined in Subparagraph c of this Section 11.1) either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as “hazardous” or harmful to the environment.

(B) The term “Hazardous Materials Contamination” shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, groundwater, air or other elements on, in or of the Property by Hazardous Materials, or the contamination of the



buildings, facilities, soil, groundwater, air or other elements on, in or of any other property as a result of Hazardous Materials at any time (whether before or after the Date of Lease) emanating from the Property.

(C) The term “Governmental Requirements” shall mean all past, present and future laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the city, or any other political subdivision in which the Property are located, and any other state, county city, political subdivision, agency, instrumentality or other entity exercising jurisdiction over Authority, Lessee or the Property.

**11.2 Responsibility for Contamination.** Lessee assumes any and all responsibility and Liabilities (as defined in Section 11.4 of this Lease) for all Hazardous Materials Contamination, which occurs during the Term of this Lease.

**11.3 Indemnification.** Lessee shall save, protect, defend, indemnify and hold harmless Authority and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including, without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Authority and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Property of any Hazardous Materials or Hazardous Materials Contamination after the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Lessee of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Authority of any act required to be performed by the Lessee under this Lease. Lessee’s obligations under this Section 11.3 shall survive the expiration of this Lease.

Authority shall save, protect, defend, indemnify and hold harmless Lessee and its officers, directors, shareholders, employees and agents from and against any and all liabilities, suits, actions, claims, demands, penalties, damages (including without limitation, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, consultants’ fees, investigation and laboratory fees, reasonable attorneys’ fees and remedial and response costs) (the foregoing are hereinafter collectively referred to as “Liabilities”) which may now or in the future be incurred or suffered by Lessees and its officers, directors, shareholders, employees or agents by reason of, resulting from, in connection with, or arising in any manner whatsoever as a direct or indirect result of (1) the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Authority of any Hazardous Materials or Hazardous Materials Contamination prior to the commencement of this Lease, including any Liabilities incurred under any Governmental Requirements relating to such Hazardous Materials or Hazardous Materials Contamination, (2) the performance by Authority of any acts, including, but not limited to, the performance of any act required by this Lease, and (3) the performance by the Lessee of any act required to be performed by the Authority under this Lease. Authority’s obligations under this Section 11.3 shall survive the expiration of this Lease.

**11.4 Duty to Prevent Hazardous Material Contamination.** Lessee shall take all necessary precautions to prevent the release of any Hazardous Materials into the environment. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, Lessee shall install and utilize such equipment and implement and adhere to such procedures as are consistent with the highest standards generally applied by residential developments as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**11.5 Obligation of Tenant to Remediate Premises.** Notwithstanding the obligation of Lessee to indemnify Authority pursuant to Section 11.3 of this Lease, Lessee shall, at its sole cost and expense, promptly take (i) all actions required by any federal, state or local governmental agency or political subdivision or any Governmental Requirements and (ii) all actions necessary to make full economic use of the Property for the purposes contemplated by this Lease and the Agreement, which requirements or necessity arise from the presence upon, about or beneath the Property of any Hazardous Materials or Hazardous Materials Contamination no matter when occurring. Such actions shall include, but not be limited to, the investigation of the environmental condition of the Property, the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal or restoration work. Lessee shall take all actions necessary to promptly restore the Property to an environmentally sound condition for the uses contemplated by this Lease and the Agreement notwithstanding any lesser standard of remediation allowable under applicable Governmental Requirements. Lessee shall nevertheless obtain the Authority's written approval prior to undertaking any activities required by this Section 11.5 during the Term of this Lease, which approval shall not be unreasonably withheld so long as such actions would not adversely affect the Property or be harmful to any other person or property. The Authority's obligations under this Section 11.5 shall survive the expiration of this Lease.

**11.6 Right of Entry.** Notwithstanding any other term or provision of this Lease, Lessee shall permit the Authority or its agents or employees to enter the Property at any time during normal business hours (except in the event of an emergency ), without prior notice in the event of an emergency, and with not less than forty-eight hours advance notice if no emergency is involved, to inspect, monitor and/or take emergency or long-term remedial action with respect to Hazardous Materials and Hazardous Materials Contamination on or affecting the Property, or to discharge Lessee's obligations hereunder with respect to such Hazardous Materials and Hazardous Materials Contamination when Lessee has failed to do so. All costs and expenses incurred by the Authority in connection with performing Lessee's obligations hereunder shall be reimbursed by Lessee to the Authority within ten (10) days of Lessee's receipt of written request therefor.

**11.7 Storage or Handling of Hazardous Materials.** Lessee, at its sole cost and expense, shall comply with all Governmental Requirements for the storage, use, transportation, handling and disposal of Hazardous Materials. In the event Lessee does store, use, transport, handle or dispose of any Hazardous Materials, Lessee shall notify Authority in writing at least ten (10) days prior to their first appearance on the Property and Lessee's failure to do so shall constitute a material default under this Lease. Lessee shall conduct all monitoring activities required or prescribed by applicable Governmental Requirements, and shall, at its sole cost and expense, comply with all posting requirements of Proposition 65 or any other similarly enacted Governmental Requirements. In addition, in the event of any complaint or governmental inquiry, or if otherwise deemed necessary by the Authority in its reasonable judgment, the Authority may require Lessee, at Lessee's sole cost and expense, to conduct specific monitoring or testing activities with respect to Hazardous Materials on the Property. Lessee's monitoring programs shall be in compliance with applicable Governmental Requirements, and any program related to the specific monitoring of or testing for Hazardous Materials

on the Property, shall be satisfactory to Authority, in Authority's reasonable discretion. Lessee shall further be solely responsible, and shall reimburse Authority, for all costs and expenses incurred by Authority arising out of or connected with the removal, clean-up and/or restoration work and materials necessary to return the Property and any property adjacent to the Property affected by Hazardous Materials emanating from the Property to their condition existing at the time of the Commencement Date. Lessee's obligations hereunder shall survive the termination of this Lease.

**11.8 Environmental Inquiries.** Lessee shall notify Authority, and provide to Authority a copy or copies, of the following environmental permits, disclosures, applications, entitlements or inquiries relating to the Property: Notices of violation, notices to comply, citations, inquiries, clean-up or abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks, and Lessee shall report to the Authority, as soon as possible after each incident, any unusual, potentially important incidents, including but not limited to, the following:

- (A) All required reports of releases of Hazardous Materials, including notices of any release of Hazardous Materials as required by any Governmental Requirement;
- (B) All fires;
- (C) All instances where asbestos has been or may be disturbed by repair work, tenant improvements or other activities in buildings containing asbestos;
- (D) All notices of suspension of any permits;
- (E) All notices of violation from Federal, State or local environmental authorities;
- (F) All orders under the State Hazardous Waste Control Act and the State Hazardous Substance Account Act and corresponding federal statutes, concerning investigation, compliance schedules, clean up, or other remedial actions;
- (G) All orders under the Porter-Cologne Act, including corrective action orders, cease and desist orders, and clean-up and abatement orders;
- (H) Any notices of violation from OSHA or Cal-OSHA concerning employees' exposure to Hazardous Materials;
- (I) All complaints and other pleadings filed against Lessee and/or Authority relating to Lessee's storage, use, transportation, handling or disposal of Hazardous Materials on the Property.

In the event of a release of any Hazardous Materials into the environment, Lessee shall, as soon as possible after the release, furnish to the Authority a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request of the Authority, Lessee shall furnish to the Authority a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Property including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

## **SECTION 12. ALTERATION OF IMPROVEMENTS.**

Lessee shall not make or permit to be made any structural alteration of, addition to or change in the Property, nor demolish all or any part of the Property without the prior written consent of Authority; provided, however, that the foregoing shall not prohibit or restrict the repair and/or replacement of the Property by Lessee. In requesting such consent Lessee shall submit to Authority detailed plans and specifications of the proposed work and an explanation of the need and reasons therefor. This provision shall not limit or set aside any obligation of Lessee under this Lease to maintain the Property in a clean and safe condition, including structural repair and restoration of damaged Property. Authority shall not be obligated by this Lease to make any improvements to the Property or to assume any expense therefor. Lessee shall not commit or suffer to be committed any waste or impairment of the Property, or any part thereof, except as otherwise permitted pursuant to this Lease.

## **SECTION 13. DAMAGE OR DESTRUCTION.**

Lessee agrees to give notice to Authority of any fire or other damage (collectively “casualty”) that may occur on the Property within ten (10) days of such fire or damage. In the event of such casualty Lessee agrees, to the extent of any insurance proceeds available therefor, to make or cause to be made full repair of such casualty, or Lessee agrees, to the extent of any insurance proceeds available therefor, to clear and remove from the Property all debris resulting from such casualty and rebuild the Property in accordance with plans and specifications previously submitted to Authority and approved in writing in order to replace in kind and scope the Property which existed prior to such damage. In the event of a casualty in which the Property are not required to be repaired, restored or rebuilt by Lessee pursuant to the terms of this Section 13, and provided Lessee does not nevertheless elect to repair, restore or rebuild the Property although Lessee has no obligations to do so, Authority may terminate this Lease.

## **SECTION 14. SALE, ASSIGNMENT, SUBLEASE OR OTHER TRANSFER.**

Except for (a) the lease of the Property to a tenant, and (b) transfers made pursuant to Section 6.4 of the Agreement, Lessee shall not sell, assign, sublease or otherwise transfer this Lease or any right therein, nor make any total or partial sale, assignment, sublease or transfer in any other mode or form of the whole or any part of the Property (each of which events is referred to in this Lease as an “Assignment”), without prior written approval of Authority, which approval shall not be unreasonably withheld as more particularly set forth below in this Section 14.2. Notwithstanding anything else herein contained, the term “Assignment” shall not be deemed to include the obtaining of any “Capital Improvement Loan(s)” (all as hereinafter defined), but shall be deemed to include all refinancing thereof and any other loans approved by Authority. Any purported assignment without the prior written consent of Authority shall render this Lease absolutely null and void and shall confer no rights whatsoever upon any purported assignee or transferee. The approval of Authority to any Assignment shall not be unreasonably withheld if the proposed purchaser, assignee, sublessee or transferee has reasonably demonstrated to the Authority, at least sixty (60) days prior to the effective date of such Assignment, such proposed purchaser’s, assignee’s, sublessee’s or transferee’s financial capability and overall competence and experience to construct and operate the Property. Review of experience in operating similar projects shall not be required with respect to institutional lenders providing financing pursuant to Section 15 hereof so long as the original Lessee (or a successor that has been expressly approved in writing by the Authority) remains responsible for operating the Property and performing as Lessee pursuant to this Lease. Approval by Authority of any sale, assignment, sublease or transfer

shall be conditioned upon such purchaser, assignee, sublessee or transferee agreeing in writing to assume the rights and obligations thereby sold, assigned, subleased or transferred, and to keep and perform all covenants, conditions and provisions of this Lease which are applicable to the rights acquired. In the absence of specific written agreement by Authority, no such sale, assignment, sublease or transfer of this Lease or the Property (or any portion thereof), or approval by Authority of any such sale, assignment, sublease or transfer shall be deemed to relieve Lessee or any other party from any obligation under this Lease.

Notwithstanding anything else contained in this Section 14, this Lease may be assigned, without the consent of Authority, to the purchaser at any foreclosure sale, whether judicial or non-judicial, or to the beneficiary or mortgagee under any Permitted Encumbrance (as defined in Section 15), pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such beneficiary or mortgagee in lieu thereof, and may thereafter be assigned by such beneficiary or mortgagee without Authority's consent, and any such purchaser, beneficiary, mortgagee or assignee shall be liable to perform the obligations herein imposed on Lessee, other than as set forth in Sections 15 of this Lease, only for and during the period that such purchaser, beneficiary, mortgagee or assignee is in possession or ownership of the leasehold estate created hereby.

#### **SECTION 15. FINANCING.**

Lessee may, at any time and from time to time during the Term, upon prior written notice to the Authority and subject to the requirements of Sections 5.3 and 14 hereof, request that the Authority authorize Lessee to mortgage, pledge, hypothecate or otherwise encumber to a federally or state chartered bank or savings and loan, a life insurance company, a mortgage company, a pension fund, investment trust or similar institutional lender (herein called "Lender") by deed of trust or mortgage or other security instrument all or any portion of Lessee's right, title and interest pursuant to this Lease and the leasehold estate hereby, following thirty (30) days prior written notice to Authority (which notice shall include an itemization of and budget for the capital improvements to be financed), to secure financing of capital improvements to the Property ("Capital Improvement Loan(s)"). The Authority shall consider such request in good faith, and may approve, disapprove or conditionally approve in Authority's reasonable discretion. The encumbrances securing the Capital Improvement Loan(s), together with refinancing of the Capital Improvement Loan(s) approved by the Authority pursuant to Section 14, and any other loan or encumbrance approved by the Authority pursuant to this Lease shall be deemed to be "Permitted Encumbrances."

The proceeds of any Capital Improvement Loan(s) shall be used solely to pay (i) the costs of construction of capital improvements to the Property, and (ii) the costs of obtaining the Capital Improvement Loan(s).

Authority and Lessee acknowledge and agree that neither Authority's interest or fee ownership of the Property nor Authority's right to receive Rent hereunder shall be subordinate to any Permitted Encumbrance or any other lien, mortgage, deed of trust, pledge or other encumbrance of Lessee's leasehold interest hereunder.

#### **SECTION 16. INDEMNITY.**

During the Term, Lessee agrees that Authority and City, their agents, officers, representatives and employees, shall not be liable for any claims, liabilities, penalties, fines or for any damage to the goods, properties or effects of Lessee, its sublessees or representatives, agents, employees, guests,

licensees, invitees, patrons or clientele or of any other person whomsoever, nor for personal injuries to, or deaths of any persons, whether caused by or resulting from any act or omission of Lessee or its sublessees or any other person on or about the Property, or in connection with the operation thereof, or from any defect in the Property. Lessee agrees to indemnify and save free and harmless Authority and City and their authorized agents, officers, representatives and employees against any of the foregoing liabilities and any costs and expenses incurred by Authority or City on account of any claim or claims therefor. Lessee shall not be responsible for (and such indemnity shall not apply to) any acts, errors or omissions of Authority, City, or their respective agents, officers, representatives or employees.

## **SECTION 17. INSURANCE.**

**17.1 Insurance to be Provided by Lessee.** During the Term, Lessee, at its sole cost and expense, shall:

(A) Maintain or cause to be maintained a policy or policies of insurance against loss or damage to the Property of all property of an insurable nature located upon the Property, resulting from fire, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage fire insurance policies. Such policy or policies shall be required to provide coverage against loss or damage resulting from flood and/or earthquake only to the extent such coverage is available at commercially reasonable rates and is required by any lender making a loan to Lessee which is secured by the Property. Such insurance policy shall name Authority as an additional insured and shall be maintained in an amount not less than one hundred percent (100%) of the full insurable value of the Property, as defined herein in this Section 17.

(B) Maintain or cause to be maintained public liability insurance issued by a company with a Best's rating of not less than A, to protect against loss from liability imposed by law for damages on account of personal injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever on or about the Property, or in connection with the operation thereof, resulting directly or indirectly from any acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction, and also to protect against loss from liability imposed by law for damages to any property of any person occurring on or about the Property, or in connection with the operation thereof, caused directly or indirectly by or from acts or activities of Lessee or its sublessees, or any person acting for Lessee, or under their respective control or direction. Such property damage and personal injury insurance shall also provide for and protect against incurring any legal cost in defending claims for alleged loss. Such personal injury and property damage insurance shall be maintained in full force and effect during the entire term of this Lease in the amount of at least One Million Dollars (\$1,000,000) combined single limit, naming Authority and City as additional insured. If the operation under this Lease results in an increased or decreased risk in the reasonable determination of Authority, then Lessee agrees that the minimum limit hereinabove designated shall be changed accordingly upon request by Authority. Lessee agrees that provisions of this paragraph as to maintenance of insurance shall not be construed as limiting in any way the extent to which Lessee may be held responsible for the payment of damages to persons or property resulting from Lessee's activities, activities of its sublessees or the activities of any other person or persons for which Lessee is otherwise responsible. Pollution liability insurance provided in compliance with the indemnification provision required by Section 11.3 hereof shall be required only to the extent such coverage is available at commercially reasonable rates.

(C) Maintain or cause to be maintained worker's compensation insurance issued by a responsible carrier authorized under the laws of the State of California to insure employers against liability for compensation under the workers' compensation laws now in force in California, or any laws hereafter enacted as an amendment or supplement thereto or in lieu thereof. Such workers' compensation insurance shall cover all persons employed by Lessee in connection with the Property and shall cover full liability for compensation under any such act aforesaid, based upon death or bodily injury claims made by, for on behalf of any person incurring or suffering injury or death in connection with the Property or the operation thereof by Lessee.

**17.2 Definition of "Full Insurable Value".** The term "full insurable value" as used in this Section 17 shall mean the actual replacement cost (excluding the cost of excavation, foundation and footings below the lowest floor and without deduction for depreciation) of the Property, including the cost of construction of the Property, architectural and engineering fees, and inspection and supervision. To ascertain the amount of coverage required, Lessee shall cause the full insurable value to be determined from time to time by appraisal by the insurer or, if no such appraisal is available, by an appraiser mutually acceptable to Authority and Lessee, not less often than once every three (3) years.

**17.3 General Insurance Provisions.** All liability policies of insurance provided for in this Section 17 shall name Lessee as the insured and Authority as an additional insured, as their respective interests may appear. All property casualty insurance policies shall include the interest of any Lessee's Mortgagee, and may provide that any loss is payable jointly to Lessee and Lessee's Mortgagee in which event such policies shall contain standard mortgage loss payable clauses. Lessee agrees to timely pay all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance.

Lessee agrees to submit policies of all insurance required by this Section 17 of this Lease, or certificates evidencing the existence thereof, to Authority on or before the effective date of this Lease, indicating full coverage of the contractual liability imposed by this Lease. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates evidencing the existence thereof, shall be submitted to Authority.

All insurance provided for under this Section 17 shall be effected under policies issued by insurers of recognized responsibility, licensed or permitted to do business in the State of California, approved by Authority.

All policies or certificates of insurance shall: (i) provide that such policies shall not be cancelled or limited in any manner without at least thirty (30) days prior written notice to Authority; (ii) provide that such coverage is primary and not contributing with any insurance as may be obtained by the Authority and shall contain a waiver of subrogation for the benefit of the City and the Authority; and (iii) name the City, Authority, and their respective officers, agents, and employees as additional insured under such policies.

**17.4 Failure to Maintain Insurance.** If Lessee fails or refuses to procure or maintain insurance as required by this Lease, Authority shall have the right, at Authority's election, and upon ten (10) days prior notice to Lessee, to procure and maintain such insurance. The premiums paid by Authority shall be treated as added rent due from Lessee, to be paid on the first day of the month following the date on which the premiums were paid. Authority shall give prompt notice of the payment of such premiums, stating the amounts paid and the name of the insured(s).

**17.5 Insurance Proceeds Resulting from Loss or Damage to Property.** All proceeds of insurance with respect to loss or damage to the Property during the term of this Lease shall be payable, under the provisions of the policy of insurance, to Lessee, and said proceeds shall constitute a trust fund to be used for the restoration, repair and rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that such proceeds exceed the cost of such restoration, repair or rebuilding, then such additional proceeds shall be distributed to the Authority. Notwithstanding the foregoing, within the period during which there is an outstanding mortgage upon the Property, such proceeds shall be payable in accordance with Section 17.3 of this Lease.

In the event this Lease is terminated by mutual agreement of Authority and Lessee and said Property are not restored, repaired or rebuilt, the insurance proceeds shall be jointly retained by the Authority and Lessee and shall be applied first to any payments due under this Lease from Lessee to Authority, second to restore the Property to its original condition and to a neat and clean condition, and finally any excess shall be apportioned between Lessee and Authority as their interests may appear; provided, however, that within any period when there is an outstanding mortgage upon the Property, such proceeds shall be applied first to discharge the debt secured by the mortgage and then for the purposes and in the order set forth above in this paragraph. The value of each interest for the purpose of apportioning excess proceeds under this Section 17.5 shall be the fair market value of such interests immediately prior to the occurrence of the damage or destruction.

#### **SECTION 18. EMINENT DOMAIN.**

In the event that the Property or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then, as between Authority and Lessee (or mortgagee, if a mortgage is then in effect), the interests of Authority and Lessee (or mortgagee) in the award and the effect of the taking upon this Lease shall be as follows:

(A) In the event of such taking of only a part of the Property, leaving the remainder of the Property in such location and in such form, shape and size as to be used effectively and practicably for the conduct thereon of the uses permitted hereunder, this Lease shall terminate and end as to the portion of the Property so taken as of the date title to such portion vests in the condemning authority, but shall continue in full force and effect as to the portion of the Property not so taken.

(B) In the event of taking of only a part of the Property, leaving the remainder of the Property in such location, or in such form, shape or reduced size as to render the same not effectively and practicably usable, for the conduct thereon of the uses permitted hereunder, this Lease and all right, title and interest thereunder shall cease on the date title to the Property or the portion thereof so taken vests in the condemning authority.

(C) In the event the Property is so taken, this Lease and all of the right, title and interest thereunder, shall cease on the date title to the Property vests in the condemning authority.

(D) Promptly after a partial taking, at Lessee's expense and in the manner specified in provisions of this Lease related to maintenance, repairs, alterations, Lessee shall restore the Property, to the extent of condemnation proceeds received by Lessee, so as to place them in a condition suitable for the uses and purposes for which the Property was leased.



(E) In the event of any taking under subparagraphs (a), (b) or (c) hereinabove, that portion of any award of compensation attributable to the fair market value of the Property or portion thereof taken, valued as subject to this Lease, shall belong to Authority. That portion of any award attributable to the fair market value of Lessee's leasehold interest in the Property pursuant to this Lease shall belong to Lessee. That portion of any award attributable to the fair market value of the Property or portion thereof taken shall belong to Authority and Lessee, as their interests may appear, except that in the event of a partial taking, where the Lease remains in effect and Lessee is obligated to restore or repair the Property, then Lessee shall be entitled to any portion of the award attributable to severance damages to the remaining Property. Said award shall be used for the restoration, repair or rebuilding of the Property in accordance with plans and specifications approved in writing by Authority. To the extent that said award for severance damages exceeds the cost of such restoration, repair or rebuilding, then such award shall be apportioned between Lessee and Authority as their interests may appear. The value of each interest for the purpose of apportionment under this Section shall be the fair market value of such interests at the time of the taking.

(F) Provided, however, that within the period during which there is an outstanding mortgage on the Property, the mortgagee shall be entitled to any portion of the award attributable to the Property, to the extent of its interest therein. The mortgagee may at its option apply said portions of the award to restoration of the Property or to reduction of the mortgage. Any excess portion of the award attributable to the condemnation of the Property shall be apportioned between Lessee and Authority as their interests may appear.

(G) Notwithstanding the foregoing provisions of this Section, Authority may, in its discretion and without affecting the validity and existence of this Lease, transfer Authority's interests in the Property in lieu of condemnation to any authority entitled to exercise the power of eminent domain. In the event of such transfer by Authority, Lessee (or mortgagee if a mortgage is then in effect) and Authority shall retain whatever rights they may have to recover from said authority the fair market value of their respective interests in the Property taken by the authority.

(H) All valuations to be made pursuant to this Section 18 shall be made by mutual agreement of Authority and Lessee.

#### **SECTION 19. OBLIGATION TO REFRAIN FROM DISCRIMINATION.**

There shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, national origin or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property, and Lessee itself or any person claiming under or through it shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees thereof or any portion thereof, or in the providing of goods, services, facilities, privileges, advantages and accommodation.

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

(A) In Leases: “The lessee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

“That there shall be no discrimination against or segregation of any person or group of persons, on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(B) In Contracts:

“There shall be no discrimination against or segregation of, any person or group of persons on account of sex, marital status, race, color, creed, religion, disability, familial status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises.”

## **SECTION 20. NONDISCRIMINATION IN EMPLOYMENT.**

Lessee, for itself and its successors and assigns, agrees that during the operation of the Property provided for in this Lease, and during any work of repair or replacement, Lessee will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, physical or mental disability, sexual orientation, ancestry or national origin.

## **SECTION 21. LABOR STANDARDS.**

Lessee shall comply, and require all contractors and subcontractors employed pursuant to this Lease to comply with all applicable labor standards provisions of the California Labor Code and federal law, including payment of prevailing wages for off-site work. Lessee shall comply with all bidding requirements applicable pursuant to the California Public Contracts Code or other applicable law.

## **SECTION 22. COMPLIANCE WITH LAW.**

Lessee agrees, at its sole cost and expense, to comply and secure compliance with all the requirements now in force, or which may hereafter be in force, of all municipal, county, state and federal authorities, pertaining to the Property, as well as operations conducted thereon, and to faithfully observe and secure compliance with, in the use of the Property, all applicable county and municipal ordinances and state and federal statutes now in force or which may hereafter be in force, and to pay before delinquency all taxes, assessments, and fees, if any, assessor levied upon Lessee or the Property, including the land and any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Lessee or by reason of the business or other activities of Lessee upon or in connection with the Property. The judgment of any court of competent jurisdiction, or the admission of Lessee or any sublessee or permittee in any action or proceeding against them, or any of them, whether Authority be a party thereto or not, that Lessee, sublessee or

permittee has violated any such ordinance or statute in the use of the Property shall be conclusive of that fact as between Authority and Lessee, or such sublessee or permittee.

### **SECTION 23. ENTRY AND INSPECTION.**

Authority reserves and shall have the right during reasonable business hours (except in cases of emergency), upon forty-eight (48) hours prior notice (except in cases of emergency) to Lessee by the Executive Director of Authority, to enter the Property for the purpose of viewing and ascertaining the condition of the same, or to protect its interests in the Property or to inspect the operations conducted thereon.

### **SECTION 24. RIGHT TO MAINTAIN.**

In the event that the entry or inspection by Authority pursuant to Section 23 hereof discloses that the Property are not in a decent, safe, and sanitary condition, Authority shall have the right, after thirty (30) days written notice to Lessee (except in case of emergency, in which event no notice shall be necessary), to have any necessary maintenance work done for and at the expense of Lessee and Lessee hereby agrees to pay promptly any and all costs incurred by Authority in having such necessary maintenance work done in order to keep the Property in a decent, safe and sanitary condition. The rights reserved in this Section shall not create any obligations or Authority or increase obligations elsewhere in this Lease imposed on Authority.

### **SECTION 25. EVENTS OF DEFAULT AND REMEDIES.**

#### **25.1 Events of Default by Lessee.**

- (A) Lessee shall abandon or surrender the Property; or
- (B) Lessee shall fail or refuse to pay, within ten (10) days of notice from Authority that the same is due, any installment of rent or any other sum required by this Lease to be paid by Lessee; or
- (C) Lessee shall fail to perform any covenant or condition of the Agreement and/or this Lease other than as set forth in subparagraphs (a) or (b) above, and any such failure shall not be cured within thirty (30) days following the service on Lessee of a written notice from Authority specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances; or
- (D) Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law and the same shall not be dismissed within sixty (60) days thereafter; or
- (E) Lessee shall be adjudicated a bankrupt; or
- (F) Lessee shall make a general assignment for the benefit of creditors in violation of the terms of this Lease;

then such event shall constitute an event of default under this Lease.

**25.2 Remedies of Authority.** In the event of any such default as described in Section 25.1, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Authority in enforcing this provision) to the account of Lessee, which charge shall be due and payable within fifteen (15) days after presentation by Authority of a statement of all or part of said costs;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Authority in enforcing this provision) from the proceeds of any insurance; or in the event that Lessee has obtained a faithful performance bond indemnifying Authority, Authority may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Authority;

(3) Exercise its right to maintain any and all actions at law or suits in equity to compel Lessee to correct or cause to be corrected said default;

(4) Have a receiver appointed to take possession of Lessee's interest in the Property, with power in said receiver to administer Lessee's interest in the Property, to collect all funds available to Lessee in connection with its operation and maintenance of the Property; and to perform all other consistent with Lessee's obligation under this Lease as the court deems proper;

(5) Maintain and operate the Property, without terminating this Lease;

(6) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Lessee of its intention to do so.

**25.3 Right of Authority in the Event of Termination of Lease.** Upon termination of this Lease pursuant to Section 25.2, it shall be lawful for Authority to re-enter and repossess the Property and Lessee, in such event, does hereby waive any demand for possession thereof, and agrees to surrender and deliver the Property peaceably to Authority immediately upon such termination in good order, condition and repair, except for reasonable wear and tear. Lessee agrees that upon such termination, title to all the Property on the Property shall vest in Authority. Even though Lessee has breached the Lease and abandoned the Property, this Lease shall continue in effect for so long as Authority does not terminate Lessee's right to possession, and Authority may enforce all of its right and remedies under this Lease, including, but not limited to, the right to recover the rent as it becomes due under this Lease. No ejectment, re-entry or other act by or on behalf of Authority shall constitute a termination unless Authority gives Lessee notice of termination in writing. Termination of this Lease shall not relieve or release Lessee from any obligation incurred pursuant to this Lease prior to the date of such termination. Termination of this Lease shall not relieve Lessee from the obligation to pay any sum due to Authority or from any claim for damages against Lessee.

**25.4 Damages.** Damages which Authority recovers in the event of default under this Lease shall be those which are then available under applicable California case and statutory law to lessors for leases in the State of California including, but not limited to, any accrued but unpaid rent and the worth at the time of award of the amount by which the unpaid rent for the balance of the term of this Lease after the date of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

**25.5 Rights and Remedies are Cumulative.** The remedies provided by this Section 25 are not exclusive and shall be cumulative to all other rights and remedies possessed by Authority. The exercise by Authority of one or more such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by Lessee.

**25.6 Limitation of Lessee's Liability.** Notwithstanding anything to the contrary herein contained, following completion of the construction of the Property, (i) the liability of Lessee shall be limited to its interest in the Property, and any rents, issues and profits arising from any subleases of the Property which are misapplied, or which have accrued but are not yet due and payable, at the time of any default hereunder and which are misapplied by Lessee when collected, and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied; (ii) no other assets of Lessee shall be affected by or subject to being applied to the satisfaction of any liability which Lessee may have to Authority or to another person by reason of this Lease; and (iii) any judgment, order, decree or other award in favor of Authority shall be collectible only out of, or enforceable in accordance with, the terms of this Lease by termination or other extinguishment of Lessee's interest in the Property. As a condition to protection under the provisions of this Section 25.6, Lessee covenants not to collect more than one (1) month's rent in advance, exclusive of reasonable security deposits, under the terms of any subleases of the Property that Lessee may enter into.

Notwithstanding the foregoing, it is expressly understood and agreed that the aforesaid limitation on liability shall in no way restrict or abridge Lessee's continued personal liability for:

(1) fraud or willful or grossly negligent misrepresentation made by Lessee in connection with this Lease;

(2) misapplication of (i) proceeds of insurance and condemnation or (ii) rentals received by Lessee under subleases subsequent to the date Authority is entitled to re-enter the Property by reason of Lessee's default pursuant to the terms hereof and applicable law;

(3) the retention by Lessee of all advance rentals and security deposits of sublessees not refunded to or forfeited by such sublessees;

(4) the indemnification undertakings of Lessee under Section 16; and

(5) Material waste by Lessee with respect to the Property.

**25.7 Events of Default by Authority.** If the Authority shall fail to perform any covenant or condition of the Agreement and/or this Lease, and any such failure shall not be cured within thirty (30) days following the service on Authority of a written notice from Lessee specifying the failure complained of, or if it is not practicable to cure or remedy such failure within such thirty (30) day period, within such longer period as shall be reasonable under the circumstances, the such event shall constitute an event of default under this Lease.

**25.8 Remedies of Lessee.** In the event of any such default as described in Section 25.6, Authority may, at its option:

(1) Correct or cause to be corrected said default and charge the costs thereof (including costs incurred by Lessee in enforcing this provision) as an operating expense for the current year;

(2) Correct or cause to be corrected said default and pay the costs thereof (including costs incurred by Lessee in enforcing this provision) from the proceeds of any insurance; or in the event that Authority has obtained a faithful performance bond indemnifying Lessee, Lessee may call upon the bonding agent to correct said default or to pay the costs of such correction performed by or at the direction of Lessee;

(3) Exercise its right to maintain any and all actions at law or suits in equity compel Authority to correct or cause to be corrected said default;

(4) Maintain and operate the Property, without terminating this Lease;

(5) With respect to a monetary default or material non-monetary default, terminate this Lease by written notice to Authority of its intention to do so.

## **SECTION 26. MISCELLANEOUS.**

**26.1 Governing Law.** The laws of the State of California shall govern the interpretation and enforcement of this Lease.

**26.2 Legal Actions.** In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Lease. Such legal actions must be instituted in the Superior Court of San Bernardino County, State of California, in any other appropriate court in that County, or in the Federal District Court in the Central District of California.

**26.3 Acceptance of Service of Process.** In the event that any legal action is commenced by Lessee against Authority, service of process on Authority shall be made by personal service upon the Chairman or Executive Director of Authority, or in such other manner as may be provided by law.

In the event that any legal action is commenced by Authority against Lessee, service of process on Lessee shall be made by personal service upon any officer of Lessee or in such other manner as may be provided by law, whether made within or without the State of California.

**26.4 Attorneys' Fees And Court Costs.** In the event that either Authority or Lessee shall bring or commence an action to enforce the terms and conditions of this Lease or to obtain damages against the other party arising from any default under or violation of this Lease, then the prevailing party shall be entitled to and shall be paid reasonable attorneys' fees and court costs therefor.

**26.5 Inspection of Books And Records.** Authority has the right (at Lessee's office, upon not less than forty-eight (48) hours' notice, and during normal business hours) to inspect the books and records of Lessee pertaining to the Property as pertinent to the purposes of this Lease. Lessee also has the right (at Authority's office, upon not less than forty-eight (48) hours' notice, and at all reasonable

times) to inspect the books and records of Authority pertaining to the Property as pertinent to the purposes of this Lease.

**26.6 Interest.** Any amount due Authority that is not paid when due shall bear interest from the date such amount becomes due until it is paid. Interest shall be at a rate equal to the lesser of the discount rate established by the San Francisco office of the Federal Reserve Bank, plus two percent (2%), on the first day of the month such amount becomes due, and the maximum rate permitted by applicable law.

**26.7 Notices.** All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, upon personal delivery or five (5) days after deposit within California in the United States mail, certified or registered mail, return receipt requested, postage prepaid and addressed as follows:

Authority: Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

Lessee: Montclair Housing Corporation  
5111 Benito Street  
Montclair, California 91763  
Attention: Executive Director

or to such other address as either party shall later designate for such purposes by written notice to the other party.

**26.8 Time is of the Essence.** Time is of the essence in the performance of the terms and conditions of this Lease.

**26.9 Non-Merger of Fee And Leasehold Estates.** If both Authority's and Lessee's estates in the Property or both become vested in the same owner, this Lease shall nevertheless not be destroyed by application of the doctrine of merger except at the express election of Authority and Lessee's Mortgagee. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work as a merger and shall, at the option of Authority, terminate all or any existing sublease or subtenancies or may, at the option of Authority, operate as an assignment to Authority of any or all such existing subleases or subtenancies.

**26.10 Holding Over.** The occupancy of the Property after the expiration of the Term of this Lease shall be construed to be a tenancy from month to month, and all other terms and conditions of this Lease shall continue in full force and effect.

**26.11 Conflict of Interest.** No member, official or employee of Authority shall have any personal interest, direct or indirect, in this Lease nor shall any such member, official or employee participate in any decision relating to the Lease which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

Lessee warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Lease.

**26.12 Non-Liability of Authority Officials And Employees.** No member, official or employee of Authority shall be personally liable to Lessee, or any successor in interest, in the event of any default or breach by Authority or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

**26.13 Relationship.** The relationship between the parties hereto shall at all times be deemed to be that of landlord and tenant. The parties do not intend nor shall this Lease be deemed to create a partnership or joint venture.

**26.14 Transactions with Affiliates.** Lessee shall have the right to enter into transactions with subsidiaries, affiliates and other related entities for the purpose of leasing space, providing cleaning, maintenance and repair services, insurance policies and other purposes related to the use and development of the Property, provided that all such costs, charges and rents are competitive with the costs, charges, rent and other sums which would be paid by or to, as the case may be, an unrelated third party.

**26.15 Waivers And Amendments.** All waivers of the provisions of this Lease must be in writing and signed by the appropriate authorities of Authority or Lessee.

The waiver by Authority of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Authority shall not be deemed to be a waiver of any preceding breach of Lessee of any term, covenant or condition of this Lease, regardless of Authority's knowledge of such preceding breach at the time of acceptance of such rent. Failure on the part of Authority to require or exact full and complete compliance with any of the covenants or conditions of this Lease shall not be construed as in any manner changing the terms hereof and shall not prevent Authority from enforcing any provision hereof. All amendments hereto must be in writing and signed by the appropriate authorities of Authority and Lessee. The Lessee's Mortgagee permitted by this Lease shall not be bound by any waiver or amendment to this Lease without Lessee's Mortgagee giving its prior written consent.

**26.16 Non-Merger With Agreement.** None of the terms, covenants or conditions agreed upon in writing in the Agreement and other instruments between the parties to this Lease with respect to obligations to be performed, kept or observed by Lessee or Authority in respect to the Property or any part thereof, shall be deemed to be merged with this Lease.

**26.17 Duplicate Originals.** This Lease is executed in three (3) duplicate originals, each of which is deemed to be an original.

**26.18 Severability.** If any provision of this Lease or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforceable to the greatest extent permitted by law.

**26.19 Terminology.** All personal pronouns used in this Lease, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the



plural, and vice versa. Titles of sections are for convenience only, and neither limit nor amplify the provisions of the Lease itself. Except for terms expressly defined in this Lease, all terms shall have the same meaning as set forth in the Agreement.

**26.20 Binding Effect.** This Lease, and the terms, provisions, promises, covenants and conditions hereof, shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

**26.21 Estoppel Certificate.** Each of the parties shall at any time and from time to time upon not less than twenty (20) days' prior notice by the other, execute, acknowledge and deliver to such other party a statement in writing certifying that this Lease is unmodified and is in full force and effect (or if there shall have been modifications that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent has been paid, and stating whether or not to the best knowledge of the signer of such certificate such other party is in default in performing or observing any provision of this Lease, and, if in default, specifying each such default of which the signer may have knowledge, and such other matters as such other party may reasonably request, it being intended that any such statement delivered by Lessee may be relied upon by Authority or any successor in interest to Authority or any prospective mortgagee or encumbrancer thereof, and it being further intended that any such statement delivered by Authority may be relied upon by any prospective assignee of Lessee's interest in this Lease or any prospective mortgagee or encumbrancer thereof. Reliance on any such certificate may not extend to any default as to which the signer of the certificate shall have had no actual knowledge.

**26.22 Force Majeure.** The time within which Authority or Lessee is obligated herein to perform any obligation hereunder, other than an obligation that may be performed by the payment of money, shall be extended and the performance excused when the delay is caused by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or other cause beyond the control of the applicable party.

**26.23 Quiet Enjoyment.** Landlord does hereby covenant, promise and agree to and with Tenant that Tenant, for so long as it is not in default hereof, shall and may at all times peaceable and quietly have, hold, use, occupy and possess the Property throughout the Term.

**IN WITNESS WHEREOF**, the parties hereto have caused this Lease to be executed by their lawfully authorized officers.

**AUTHORITY:**

**MONTCLAIR HOUSING AUTHORITY**, a public body corporate and politic

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

**LESSEE:**

**MONTCLAIR HOUSING CORPORATION**, a California nonprofit public benefit corporation

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

**EXHIBIT A TO ATTACHMENT NO. 2**

**PROPERTY MAP**

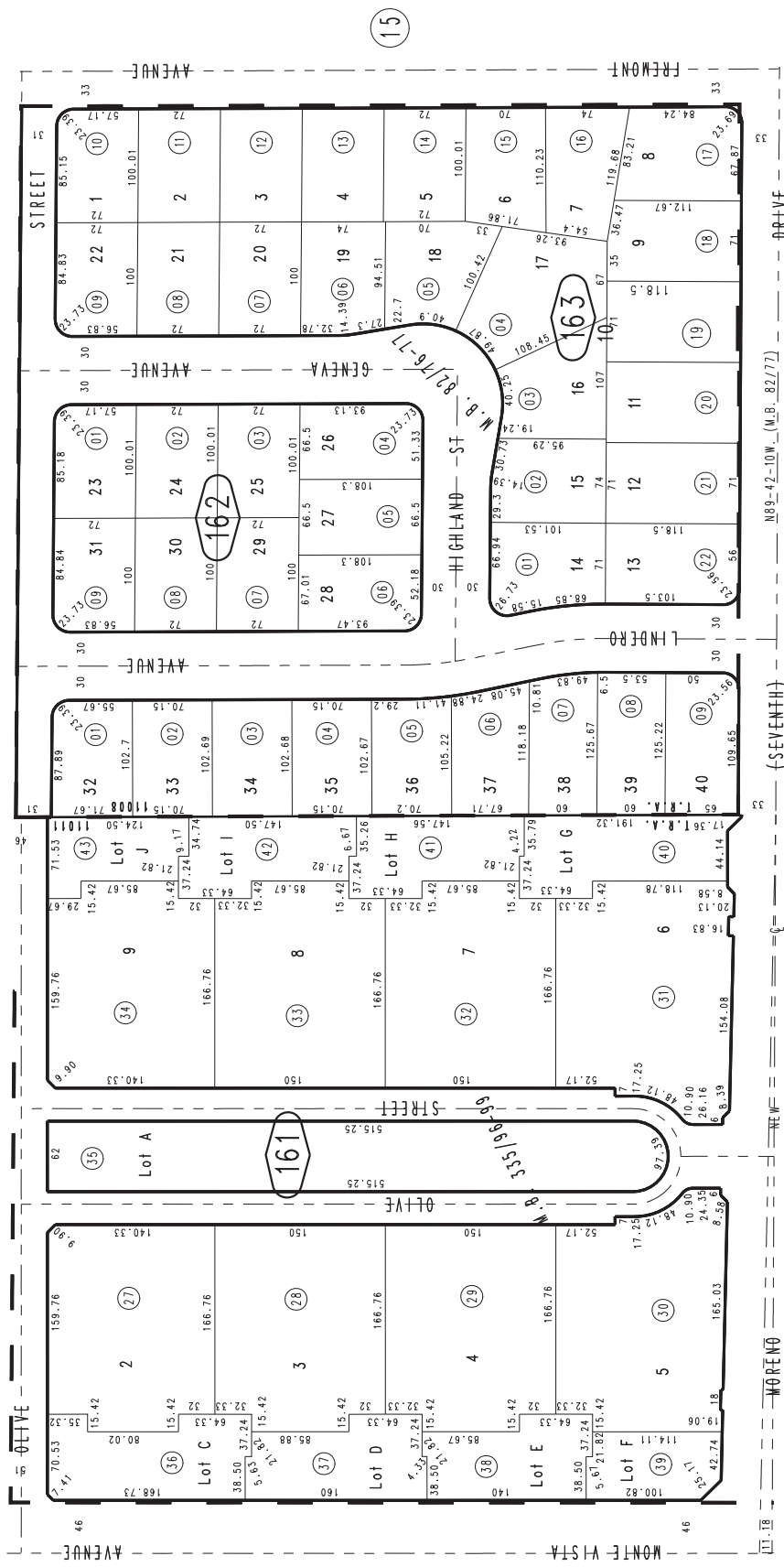
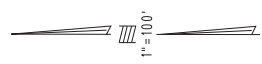
[To Be Attached]

City of Montclair  
Tax Rate Area  
11008 11011

Tract No. 6387, M.B. 82/76-77

1008 - 16

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.



01

17

1009  
03

REVISED  
02/04/10 LH  
04/23/12 RU

Assessor's Map  
Book 1008 Page 16  
San Bernardino County

Pln. N.W.1/4, Sec.14  
T.1S.,R.8W.

Pln. Tract No. 18213, M.B. 335/96-99  
Pln. Parcel Map No. 10434, P.M. 132/44-46

October 2004

**EXHIBIT B TO ATTACHMENT NO. 2**

**LEGAL DESCRIPTION**

That certain real property located in the State of California, County of San Bernardino, City of Montclair, and described as follows:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF San Bernardino STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 10 OF TRACT NO. 6387, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGES 76 AND 77, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A.P.N.: 1008-163-19-0-000

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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

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

\_\_\_\_\_  
 Number Of Pages

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

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above

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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

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

\_\_\_\_\_  
 Number Of Pages

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

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above



**ATTACHMENT NO. 3**

**CITY DEED**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Montclair Housing Authority  
5111 Benito Street  
Montclair, California 91763  
Attn: Executive Director

[Space above for recorder.]

APN: \_\_\_\_\_

Exempt from recording fee and documentary transfer tax pursuant to Government Code Section 27383 and Revenue and Taxation Code Section 11928.

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF MONTCLAIR, a municipal corporation (“Grantor”), hereby grants to the MONTCLAIR HOUSING AUTHORITY, a public body, corporate and politic, that certain real property located in the County of San Bernardino, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

**CITY OF MONTCLAIR,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

**RECORDING REQUESTED BY**  
**WFG TITLE**



Electronically  
Recorded in Official Records  
County of San Bernardino  
Bob Dutton  
Assessor-Recorder-County Clerk

**WHEN RECORDED MAIL TO**

**DOC# 2020-0133558**

**City of Montclair**  
**5111 Benito St**  
**Montclair Ca 91763**

04/17/2020  
03:55 PM  
SAN  
C4914

Titles: 1	Pages: 3
Fees	\$20.00
Taxes	\$484.00
CA SB2 Fee	0.00
<b>Total</b>	<b>\$504.00</b>

20-122147

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**Title**

**GRANT DEED**

**APN 1008-163-19**

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars (\$75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars (\$225.00).

Reason for Exemption:

Exempt from fee per GC 27388.1, recorded in connection with a transfer subject to the imposition of documentary transfer tax (DTT).

- Exempt from fee per GC 27388.1, recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier, or
- Exempt from fee per GC 27388.1, recorded in connection with a transfer that was subject to documentary transfer tax which was paid on document recorded previously on \_\_ date) as document number \_ of Official Records. (Cap. \$225.00)
- Exempt from fee per GC 27388.1, fee cap of \$225.00 reached, and/or
- Exempt from fee per GC 27388.1, not related to real property

Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Jobs Act fee. Fees collected are deposited to the State and may not be available for refund.

**RECORDING REQUESTED BY**  
**WFG TITLE**

**WHEN RECORDED MAIL TO**

**City of Montclair**  
**5111 Benito St**  
**Montclair Ca 91763**

20-122147

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**Title**

**GRANT DEED**

**APN 1008-163-19**

Pursuant to Senate Bill 2 – Building Homes and Jobs Act (GC Code Section 27388.1), effective January 1, 2018, a fee of seventy-five dollars (\$75.00) shall be paid at the time of recording of every real estate instrument, paper, or notice required or permitted by law to be recorded, except those expressly exempted from payment of recording fees, per each single transaction per parcel of real property. The fee imposed by this section shall not exceed two hundred twenty-five dollars (\$225.00).

**Reason for Exemption:**

Exempt from fee per GC 27388.1, recorded in connection with a transfer subject to the imposition of documentary transfer tax (DTT),

- Exempt from fee per GC 27388.1, recorded in connection with a transfer of real property that is a residential dwelling to an owner-occupier, or
- Exempt from fee per GC 27388.1, recorded in connection with a transfer that was subject to documentary transfer tax which was paid on document recorded previously on \_\_\_ date) as document number \_ of Official Records. (Cap. \$225.00)
- Exempt from fee per GC 27388.1, fee cap of \$225.00 reached, and/or
- Exempt from fee per GC 27388.1, not related to real property

**Failure to include an exemption reason will result in the imposition of the \$75.00 Building Homes and Jobs Act fee. Fees collected are deposited to the State and may not be available for refund.**

RECORDING REQUESTED BY:  
WFG NATIONAL TITLE COMPANY

RECORDING REQUESTED BY:  
WFG National Title Company

AND WHEN RECORDED MAIL TO:

*City of Montclair*  
5111 Benito Street  
Montclair, CA 91763

THIS SPACE FOR RECORDER'S USE ONLY:

Title Order No.: 20-122147  
AP#: 1008-163-19-0-000

Escrow No.: 007876-MO

**GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

**DOCUMENTARY TRANSFER TAX is \$484.00**

computed on full value of property conveyed, or  
 computed on full value less value of liens or encumbrances remaining at time of sale.  
 Unincorporated area  City of Montclair **AND**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

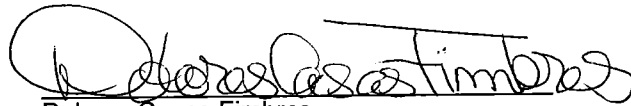
**Dolores Casas Fimbres, a Married Woman, as her sole and separate property**

hereby GRANT(s) to:

**City of Montclair, a Municipal Corporation, a Corporation**

the real property in the City of Montclair, County of San Bernardino, State of California, described as:  
LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF  
Also Known as: 5072 Moreno Street, Montclair, CA 91763

Dated March 25, 2020

  
Dolores Casas Fimbres

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

STATE OF CALIFORNIA

COUNTY OF San Bernardino

On April 13, 2020 before me, Pedro Martin

appeared Dolores Casas Fimbres

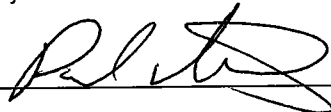
A Notary Public personally who proved to me on the

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

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

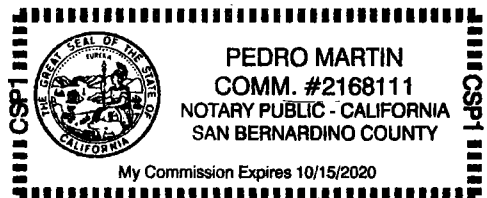
WITNESS my hand and official seal.

Signature



(Seal)

MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS SHOWN ABOVE:



**EXHIBIT A TO ATTACHMENT NO. 3**

**LEGAL DESCRIPTION**

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

(APN No. \_\_\_\_\_)

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF San Bernardino STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 10 OF TRACT NO. 6387, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 82, PAGES 76 AND 77, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

A.P.N.: 1008-163-19-0-000

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the fee interest in real property conveyed under the foregoing Grant Deed by the City of Montclair, a municipal corporation, as to the following property:

Real property in the City of Montclair, County of San Bernardino, State of California, described as follows:

1008-163-19-0000  
(APN No. \_\_\_\_\_)

is hereby accepted by the Executive Director of the Montclair Housing Authority (“Authority” and “Grantee”) on behalf of the governing board of the Authority pursuant to authority conferred by action of the governing board of the Authority on \_\_\_\_\_ August 15, 2022, and the Grantee consents to recordation thereof by its duly authorized officer.

**MONTCLAIR HOUSING AUTHORITY,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Executive Director

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

STATE OF CALIFORNIA )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
 Title(s)

\_\_\_\_\_  
 Title Or Type Of Document

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

\_\_\_\_\_  
 Number Of Pages

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

\_\_\_\_\_  
 Date Of Documents

\_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Signer(s) Other Than Named Above



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

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary Public

**OPTIONAL**

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

**CAPACITY CLAIMED BY SIGNER**

**DESCRIPTION OF ATTACHED DOCUMENT**

- Individual
- Corporate Officer

\_\_\_\_\_  
Title(s)

\_\_\_\_\_  
Title Or Type Of Document

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

\_\_\_\_\_  
Number Of Pages

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

\_\_\_\_\_  
Date Of Documents

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signer(s) Other Than Named Above

RESOLUTION NO. 22-3342

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR APPROVING AGREEMENT NO. 22-26 AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION; AUTHORIZING TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 5072 MORENO STREET FROM THE CITY OF MONTCLAIR TO THE MONTCLAIR HOUSING AUTHORITY; AND DECLARING SUCH REAL PROPERTY TO BE EXEMPT SURPLUS LAND**

**WHEREAS**, the City of Montclair (the "City") acquired property located at 5072 Moreno Street (the "Property") with funds from the City's Housing Trust Fund, Agreement No. 20-21, for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resource for low-to-moderate income households; and

**WHEREAS**, Agreement No. 22-26, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements; and

**WHEREAS**, Assembly Bill 1486 ("AB 1486") expanded the Surplus Land Act (Government Code section 54220 et seq.) (the "SLA") requirements for local agencies prior to the disposition and disposal of any "surplus land" or "exempt surplus land"; and

**WHEREAS**, the Property meets the definition of "surplus land," as it is no longer necessary for the City's use and the City seeks to dispose of the property; and

**Whereas**, even if the SLA were to apply, the Property would be exempt surplus land, pursuant to section 54221(f)(1)(D) of the SLA, because it is being transferred to the MHA, another government agency, for its use.

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

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The City of Montclair hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing available at an affordable cost.

**SECTION 3:** The City of Montclair is hereby authorized and directed to enter Agreement 22-26, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The City of Montclair agrees to the transfer of the Property to the Montclair Housing Authority. The City Manager, or designee, is authorized to record the grant deeds and further actions that are necessary or appropriate to transfer the Property to the Montclair Housing Authority.

**SECTION 5:** The City of Montclair hereby finds and declares that the Property is no longer necessary for the City's use and is surplus land, as defined in California Government Code section 54221, based on the true and correct written findings found in this Resolution and incorporated herein by reference. The City is authorized to transfer the Property without regard to the SLA pursuant to Government Code section 54221(f)(1)(D), so long as the transfer is to another government agency, the Montclair Housing Authority, for their use.

**SECTION 6:** The City Clerk shall certify to the adoption of this Resolution.

**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. 22-3342 was duly adopted by the Montclair City Council at a regular meeting thereof 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

**RESOLUTION NO. 22-01**

**A RESOLUTION OF THE MONTCLAIR HOUSING AUTHORITY APPROVING AGREEMENT NO. 22-26 AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION AND ACCEPTING THE TRANSFER OF CERTAIN REAL PROPERTY LOCATED AT 5072 MORENO STREET FROM THE CITY OF MONTCLAIR**

**WHEREAS**, the City of Montclair (the "City") acquired property located at 5072 Moreno Street (the "Property") with funds from the City's Housing Trust Fund, Agreement No. 20-21, for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resource for low-to-moderate income households; and

**WHEREAS**, Agreement No. 22-26, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Montclair Housing Authority Board of Directors does hereby find, determine, and order as follows:

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The Montclair Housing Authority hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing available at an affordable cost.

**SECTION 3:** The Montclair Housing Authority is hereby authorized and directed to enter Agreement 22-26, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The Montclair Housing Authority agrees to accept the transfer of Property from the City of Montclair. The Executive Director of the Montclair Housing Authority, or designee, is authorized to record the grant deeds and further actions which are necessary or appropriate to transfer the Property to the Montclair Housing Authority.

**SECTION 5:** The Montclair Housing Authority Secretary shall certify to the adoption of this Resolution.

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

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Chair

**ATTEST:**

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Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Authority, DO HEREBY CERTIFY that Resolution No. 22-01 was duly adopted by the Montclair Housing Authority Board of Directors at a regular meeting thereof 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

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Andrea M. Myrick  
Secretary

**RESOLUTION NO. 22-01**

**A RESOLUTION OF THE MONTCLAIR HOUSING CORPORATION APPROVING AGREEMENT NO. 22-26, AN AFFORDABLE HOUSING AGREEMENT BY AND BETWEEN THE CITY OF MONTCLAIR, MONTCLAIR HOUSING AUTHORITY, AND MONTCLAIR HOUSING CORPORATION**

**WHEREAS**, the City of Montclair (the "City") acquired property located at 5072 Moreno Street (the "Property") with funds from the City's Housing Trust Fund, Agreement No. 20-21, for the purpose of increasing, improving, and preserving the City of Montclair's supply of low-and-moderate income housing available at an affordable cost; and

**WHEREAS**, the City is the owner of that Property within the corporate limits of the City of Montclair; and

**WHEREAS**, pursuant to the provisions of the California Housing Authority Law (Part 2 of Division 24 of the Health and Safety Code [herein, the "Housing Authority Law"]), the City has designated the Montclair Housing Authority (the "Housing Authority") as the successor housing entity for the City of Montclair; and

**WHEREAS**, pursuant to the Housing Authority Law, the Housing Authority is a housing authority duly established and operating as a local housing authority performing a public function and may make and execute contracts necessary or convenient to the exercise of its powers; and

**WHEREAS**, the Montclair Housing Corporation (the "Housing Corporation") was formed as a 501(c)(3) to operate and maintain the housing assets including single and multi-family residential units of the Housing Authority; and

**WHEREAS**, the City desires to convey to the Housing Authority the Property and the Housing Authority desires to acquire the Property from the City; and

**WHEREAS**, upon acquiring of the Property, the Housing Authority intends to lease the Property to the Housing Corporation for operation of the Property as an affordable rental housing resource for low-to-moderate income households; and

**WHEREAS**, Agreement No. 22-26, an Affordable Housing Agreement by and between the City, Housing Authority, and Housing Corporation, provides for the transaction contemplated above to occur in accordance with the public purposes and provisions of applicable state and local laws and requirements.

**NOW, THEREFORE, BE IT RESOLVED** that the Montclair Housing Corporation Board of Directors does hereby find, determine, and order as follows:

**SECTION 1:** The above recitals are true and correct and are a substantive part of this Resolution.

**SECTION 2:** The Montclair Housing Corporation hereby finds and determines that the transfer of the Property to the Montclair Housing Authority will ensure the continued preservation and availability of low- and moderate-income housing available at an affordable cost.

**SECTION 3:** The Montclair Housing Corporation is hereby authorized and directed to enter Agreement 22-26, an Affordable Housing Agreement by and among the City of Montclair, Montclair Housing Authority, and Montclair Housing Corporation.

**SECTION 4:** The Montclair Housing Corporation Secretary shall certify to the adoption of this Resolution.

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

\_\_\_\_\_

Chair

**ATTEST:**

\_\_\_\_\_

Secretary

I, Andrea M. Myrick, Secretary of the Montclair Housing Corporation, DO HEREBY CERTIFY that Resolution No. 22-01 was duly adopted by the Montclair Housing Corporation Board of Directors at a regular meeting thereof 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

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Andrea M. Myrick  
Secretary



# CITY COUNCIL AGENDA REPORT

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<b>DATE:</b>	AUGUST 15, 2022	<b>FILE I.D.:</b>	COV100/CYC125
<b>SECTION:</b>	CONSENT - RESOLUTIONS	<b>DEPT.:</b>	CITY MGR.
<b>ITEM NO.:</b>	2	<b>PREPARER:</b>	A. MYRICK
<b>SUBJECT:</b>	CONSIDER ADOPTION OF RESOLUTION NO. 22-3376 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES FOR THE PERIOD OF AUGUST 15, 2022, THROUGH SEPTEMBER 14, 2022		

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**REASON FOR CONSIDERATION:** The City Council's adoption of Resolution No. 22-3376 would extend the City's remote public meeting procedures under AB 361 for an additional 30 days, expiring September 14, 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. 22-3376.

**RECOMMENDATION:** Staff recommends the City Council adopt Resolution No. 22-3376 making factual findings in compliance with AB 361 for the continuation of teleconferencing during public health emergencies for the period of August 15, 2022, through September 14, 2022.



RESOLUTION NO. 22-3376

**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 AUGUST 15, 2022, THROUGH SEPTEMBER 14, 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 September 14, 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.

\_\_\_\_\_  
Mayor

**ATTEST:**

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

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3376 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

MINUTES OF THE MEETING OF THE MONTCLAIR  
PERSONNEL COMMITTEE HELD ON MONDAY,  
AUGUST 1, 2022, AT 6:20 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 6:20 p.m.

**II. ROLL CALL**

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

**III. APPROVAL OF MINUTES**

**A. Minutes of the Regular Personnel Committee Meeting of July 18,  
2022.**

Moved by Council Member Johnson, seconded by Mayor Pro Tem  
Ruh, and carried unanimously to approve the minutes of the  
Personnel Committee meeting of July 18, 2022.

**IV. PUBLIC COMMENT - None**

**V. CLOSED SESSION**

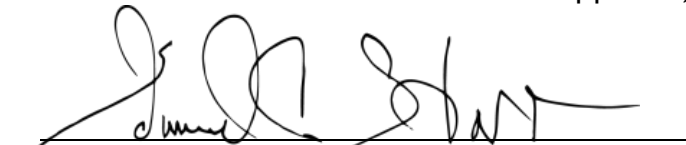
At 6:21 p.m., the Personnel Committee went into Closed Session  
regarding personnel matters related to appointments, resignations/  
terminations, and evaluations of employee performance.

At 6:45 p.m., the Personnel Committee returned from Closed Session.  
Mayor Pro Tem Ruh stated that no announcements would be made at this  
time.

**VI. ADJOURNMENT**

At 6:45 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr  
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, AUGUST 1, 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

Council Member Johnson 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; Assistant City Manager/Director of Human Services Richter; Executive Director of Public Safety/Police Chief Avels; City Attorney Robbins; City Clerk Myrick

V. PRESENTATIONS — None

VI. PUBLIC COMMENT

A. **Mrs. Carolyn Raft**, Board Trustee, **West Valley Mosquito and Vector Control District (WVMVCD)**, reported that **WVMVCD** has found mosquitoes that tested positive for West Nile Virus (WNV) in Upland, Rancho Cucamonga, Chino, and Ontario; however, the sample in Montclair tested negative for WNV. She advised residents should be careful and wear protection when enjoying a beer outdoors on these warm summer evenings.

B. **Mr. Vincent Tsai** introduced himself as a candidate for California State Senate, District 22. He provided his background as a Deputy of the **Los Angeles County Sheriff's Department**, and stated he is running to make a difference in his community, mainly due to an increase in crime. He stated he also would like to reduce the gas tax and stop the state from throwing money away on trying to address homelessness and instead direct the money toward drug abuse and mental illness, which he feels are the root causes of homelessness.

VII. PUBLIC HEARINGS

A. **Consider Adoption of Resolution No. 22-3374 Ordering the Submission to the Voters of the City of Montclair a Measure to Consider a General Business License Tax on Commercial Retail Sales of Cannabis at the General Municipal Election to be Held on Tuesday, November 8, 2022; Directing the City Attorney to Prepare an Impartial Analysis of the Measure; and Providing for the Filing of Arguments and Rebuttal Arguments in Favor of and Against the Measure**

**Consider Adoption of Resolution No. 22-3375 Ordering the Submission to the Voters of the City of Montclair an Advisory Measure for the City Council to Consider and Approve Ordinances Legalizing and Licensing Medical and Adult-Use Cannabis Business in the City of Montclair at the General Municipal Election to be Held on Tuesday, November 8, 2022; Directing the City Attorney to Prepare and Impartial Analysis Of the Advisory Measure; And Providing for the Filing of Arguments and Rebuttal Arguments in Favor of and Against the Advisory Measure**

**Consider Authorizing the City Attorney to Complete a Final Review of, and Make Any Revisions Necessary to, Resolution Nos. 22-3374 and 22-3375 Prior to Submission to the San Bernardino County Registrar of Voters for Inclusion of the Two Measures on the Ballot at the November 8, 2022 General Municipal Election**

**First Reading — Consider Ordinance No. 22-999 Adding Chapter 4.76 to Title 4 of the Montclair Municipal Code Related to Imposing a Cannabis Business License Tax (Subject to Final Approval by the Voters at the Tuesday, November 8, 2022 General Municipal Election)**

**Consider Setting a Public Hearing for Second Reading and Adoption of Ordinance No. 22-999 for Monday, August 15, 2022, at 7:00 p.m.**

City Manager Starr provided a thorough presentation on the matters to be considered, including amendments to the item after the agenda report was published.

Mayor Dutrey declared it the time and place set for public hearing to consider Resolution Nos. 22-3374 and 22-3375 and Ordinance No. 22-999 and invited comments from the public.

**Mrs. Raft** stated she is glad to see this issue will finally be going to the voters and wished the City luck on the measure's passage. She stated people will sell, purchase, and use cannabis whether or not it is legal, and the City might as well legalize it for the tax revenue.

**Mr. Mark Ramos**, President, **United Food and Commercial Workers International Union (UFCW) Local 1428**, expressed his support for the City legalizing and taxing cannabis businesses. He proposed lowering the tax cap, noting he feels 10 percent is high. He stated **UFCW** was the only labor union that endorsed Proposition 64 and he would be happy to work with the City to develop the regulations should the measure pass.

**Mr. Bruce Culp**, resident, stated for clarification that it is currently legal for residents to possess and grow up to a certain amount of cannabis. He emphasized the necessity to be clear that residents are not voting to legalize what is already legal, but that they are voting on the legalization of the sale of cannabis.

**Mr. Matthew Nathaniel** stated he looks forward to this measure moving forward and reiterated the tax rate cap is high, noting most jurisdictions are setting the taxes at four to six percent or below and some are even suspending the taxes temporarily so that the new businesses can get established. He added cannabis businesses are already heavily tax burdened and they do not have the ability to write off tax deductions like other businesses. He warned setting the tax too high could scare away established businesses and attract new operations that are inexperienced and do not understand how to operate responsibly. He also mentioned the importance of crafting a fair and thorough process for selection.

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.

Mayor Dutrey received clarification on the following:

- The City Council can set the tax anywhere from 0 to 10 percent;
- Staff's original franchise fee proposal may still be an option if the tax is not approved, as it is not considered a tax but rather would involve a franchise agreement with an operator as opposed to a business license;
- The City Council could provide operators with the option to apply for a business license or enter into a franchise agreement;
- The regulatory ordinances would be updated and presented for approval if the City Council decides to legalize cannabis businesses; and

- The original regulatory ordinances provided for a community benefit contribution from cannabis business operators.

Mayor Pro Tem Ruh stated his concerns as follows:

- The City should have regulations drafted and ready before asking the residents to vote on legalization or a tax.
- Other cities that have legalized cannabis businesses have included provisions that benefit the community, such as donations to local nonprofits, hiring a percentage of employees who live in the city, restricting payment of wages in product, and providing a living wage.
- The City should not look to legalize something just because the state allows it, comparing it to the upcoming statewide measure proposing to legalize gambling outside of reservations. He suggested the City would not try to do the same if it passes.
- The ballot language is long and confusing and should simply ask if the sale of marijuana should be legal in the City of Montclair.

Mayor Dutrey stated the cannabis industry has changed over the past decade in terms of taxes, regulations, delivery, and public sentiment. He stated the voters put elected officials in office to make decisions, and if legalized sale of cannabis is what the voters want, then the City Council must ensure that the regulations include increased economic opportunities, ensure the businesses don't cause increased crime or other public nuisances, and require the businesses contribute to the community in a positive way.

Council Member Johnson stated the City Council's job is to do what the voters want. She added the voters of Montclair approved Proposition 64 and indicated their support for legalizing and taxing cannabis businesses in the City in the **FM3** survey.

Council Member Lopez stated his concerns as follows:

- Cannabis businesses are currently lobbying to reduce taxes where they are operating.
- Staff may make it difficult for the City Council to change the tax rate and use delay tactics such as requesting to evaluate the fiscal impact of changing the tax.
- If there is so much confidence, this should be pushed as a special tax requiring 2/3 voter approval to increase funding for the Police and Fire Departments and have 1 percent go toward community benefits.
- Having a high tax cap of 10 percent could make the City less competitive with other cities due to the possibility of raising the tax up to 10 percent at any time.
- He does not like the current Community Benefit Fund application process requiring nonprofits to apply and compete for funds and would want an entirely separate process associated with cannabis business tax revenues.

Mayor Pro Tem Ruh concurred with Council Member Lopez and stated he thinks the City Council should not rush to implement this now and instead take time to develop and adopt the regulations and then put it on the ballot next year at a special election.

City Attorney Robbins advised taxes cannot be placed on the ballot for a special election, but the legalization question could be voted on at a special election.

Council Member Martinez stated her opinion that delaying the vote in favor of implementing regulations is no different than taking away the voters' ability to weigh in on the matter first. She asked for clarification on the advisory measure being included with the tax measure.

City Manager Starr advised the state can issue a cannabis business licenses to businesses that want to operate in a city that allows such businesses but does not have its own local regulations in place. However, often times the state will assume a city is already open for cannabis business if they are putting forth a cannabis tax measure. He noted having the advisory question in conjunction with the tax question will signal to the state that the City Council still maintains the authority of determining whether cannabis businesses can operate in the City.

Council Member Martinez stated, while she likes many of the ideas Mayor Pro Tem Ruh and Council Member Lopez are suggesting, she believes the City Council should let the residents vote on the question of legalization and, when the regulations are drafted, the City Council can ensure the revenues go to support matters that are important to the residents like public safety and addressing homelessness.

\*Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 5-0, the City Council took the following actions:

- (a) Adopted Resolution No. 22-3375 ordering the submission to the voters of the City of Montclair an Advisory Measure for the City Council to consider and approve ordinances legalizing and licensing medical and adult-use cannabis business in the City of Montclair at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare and impartial analysis of the Advisory Measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the Advisory Measure; and
- (b) Authorized the City Attorney to complete a final review of, and make any revisions necessary to, Resolution No. 22-3375 prior to submission to the San Bernardino County Registrar of Voters for inclusion of the Advisory Measure on the ballot at the November 8, 2022 General Municipal Election.

Mayor Pro Tem Ruh stated his "yes" vote was against his better judgment.

\*Mayor Dutrey moved to request the City Manager prepare a policy for the procedure to be used to allocate funds generated from cannabis businesses to community benefits, which would be incorporated into the cannabis regulations at a future date if the voters adopt the tax. Council Member Johnson seconded the motion. The motion passed 3-2 (Ruh and Lopez dissenting).

\*Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-1 (Ruh opposed), the City Council took the following actions:

- (a) Adopted Resolution No. 22-3374 ordering the submission to the voters of the City of Montclair a Measure to consider a general business license tax on commercial retail sales of cannabis at the General Municipal Election to be held on Tuesday, November 8, 2022; directing the City Attorney to prepare an impartial analysis of the Measure; and providing for the filing of arguments and rebuttal arguments in favor of and against the Measure; with the following revision to the ballot question:

Shall the measure funding general Montclair services, including supporting 911/police/fire response; preventing thefts/property crime; recruiting/retaining firefighters, paramedics; retaining local business/ jobs; repairing streets/potholes; addressing homelessness; by taxing cannabis retail, delivery, cultivation, manufacturing/testing businesses at a rate of not more than <del>10%</del> <b>7%</b> of gross receipts, raising about \$3,500,000 annually, until ended by voters, requiring audits, spending disclosure, funds used locally, cannabis businesses follow laws protecting public health/safety, be adopted?	YES
	NO



- (b) Authorized the City Attorney to complete a final review of, and make any revisions necessary to, Resolution No. 22-3374 prior to submission to the San Bernardino County Registrar of Voters for inclusion of the Measure on the ballot at the November 8, 2022 General Municipal Election;
- (c) Revised Ordinance No. 22-999 as follows:
  - C. The maximum rate of the cannabis tax shall be calculated as follows:
    - 1. For every person who engages in commercial cannabis cultivation shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
    - 2. For every person who engages in the operation of a testing laboratory for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
    - 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
    - 4. For every person who engages in a cannabis distribution business for cannabis or cannabis products shall be subject to the maximum tax rate not to exceed ~~ten percent (10%)~~ seven percent (7%) of gross receipts.
    - 5. For every person who engages in cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section 4.76.040 (C) (1), (2), (3) or (4), the maximum tax rate shall not exceed seven percent (7%) of gross receipts.
- (d) Conducted the first reading of revised Ordinance No. 22-999 adding Chapter 4.76 to Title 4 of the Montclair Municipal Code related to imposing a cannabis business license tax (subject to final approval by the voters at the Tuesday, November 8, 2022 General Municipal Election) by number and title only and waived further reading;
- (e) Set a public hearing for Monday, August 15, 2022, at 7:00 p.m. to consider second reading and adoption of Ordinance No. 22-999.

First reading of Ordinance No. 22-999 was approved by the following 4-1 vote:

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

Council Member Lopez stated his difficulty voting for this motion, reiterating that he supports cannabis businesses that are conducted in a legal manner that benefit and contribute to the community; however, his hesitance to support moving forward with the tax lies in what he feels is a lack of assurances.

**VIII. CONSENT CALENDAR**

Mayor Pro Tem Ruh requested Item C-2 be pulled from the Consent Calendar.

Council Member Johnson asked for clarifications on Item C-1.

Mayor Dutrey entertained discussion on Item C-1 prior to vote on the Consent Calendar.

Moved by Council Member/Director Lopez, seconded by Mayor/Chair Dutrey, and carried unanimously 5-0, the City Council pulled Item C-2 and approved the remainder of the Consent Calendar as presented, with discussion on Item C-1:

**A. Approval of Minutes**

**1. Regular Joint Meeting — July 18, 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 July 18, 2022 regular joint meeting.

**B. Administrative Reports**

**1. Approval of City Warrant Register and Payroll Documentation**

The City Council approved the Warrant Register dated August 1, 2022, totaling \$2,245,025.07; and the Payroll Documentation dated June 19, 2022, amounting to \$882,130.81 gross, with \$588,432.27 net being the total cash disbursement.

**2. Authorizing the Use of State Asset Forfeiture Funds for the Purchase and Installation of Additional Shelves and Shelf Dividers for the Police Department Evidence Storage Room**

The City Council authorized the use of State Asset Forfeiture Funds for the purchase and installation of additional shelves and shelf dividers for the Police Department evidence storage room.

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

The City Council authorized the destruction of certain obsolete public records pursuant to the City of Montclair Records Retention Schedule.

**4. Approval of the Payment for a One-Year Subscription Renewal of Zengine Application Software for the Montclair to College Program Through Wizehive, Inc.**

The City Council acting as successor to the Montclair Community Foundation Board approved the payment for a one-year subscription renewal of Zengine application software for the Montclair to College Program through Wizehive, Inc.

**C. Agreements**

**1. Approval of Agreement No. 22-54 Amending Agreement No. 17-30 with Mariposa Landscapes, Inc. for Landscape Maintenance Services, Subject to Any Revisions Deemed Necessary by the City Attorney**

Council member Johnson asked if trash around the City would be picked up daily.

City Manager Starr stated trash would be picked up on the medians during days Mariposa is working, Monday through Friday.

Council Member Lopez asked if the Pacific Electric Trail is only to be cleaned and maintained once per month.

City Manager Starr stated that is correct, however City staff also ensures the trail is kept clean and the City is responsible for a very short segment of the trail.

The City Council approved *Agreement No. 22-54* amending *Agreement No. 17-30* with Mariposa Landscapes, Inc. for landscape maintenance services, subject to any revisions deemed necessary by the City Attorney.

3. **Approval of *Agreement No. 22-82* with Liebert Cassidy Whitmore for Participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, Subject to Any Revisions Deemed Necessary by the City Attorney**

The City Council approved *Agreement No. 22-82* with Liebert Cassidy Whitmore for participation in the East Inland Empire Employment Relations Consortium and Premium Liebert Library Subscription, subject to any revisions deemed necessary by the City Attorney.

**D. Resolutions**

1. **Adoption of Resolution No. 22-3369 Authorizing Placement of Assessments on Certain Properties for Delinquent Sewer and Trash Accounts**

The City Council adopted Resolution No. 22-3369 authorizing placement of assessments on certain properties for delinquent sewer and trash accounts.

**IX. PULLED CONSENT CALENDAR ITEMS**

**C. Agreements**

2. **Approval of *Agreement No. 22-70* with Pivotal Strategies LLC for Community Education and Outreach Services Related to a Proposed Ballot Measure to Establish a Commercial Cannabis Tax Subject to Any Revisions Deemed Necessary by the City Attorney**

Mayor Pro Tem Ruh asked about the funding source and whether the educational materials would consist of pros and cons of the measure.

City Manager Starr indicated the contract would be paid from the Economic Development Fund, and concurred that the type of educational materials would be similar to those produced for Measure L in 2020.

Council Member Lopez stated he has concerns with extrapolating polling data for the educational materials and emphasized he does not want to see any mention of “protecting drinking water sources.”

City Attorney Robbins advised she would carefully review and ensure the materials are focused on educating rather than advocating for the measure.

Mayor Pro Tem Ruh stated he would like to receive a copy of the materials to review before they are published.

City Manager Starr stated that could be provided to all Council Members.

Moved by Mayor Dutrey, seconded by Council Member Martinez, and carried 3-2 (Lopez and Ruh dissenting), the City Council approved *Agreement No. 22-70* with Pivotal Strategies LLC for community education and outreach services related to a proposed ballot measure to establish a commercial cannabis tax subject to any revisions deemed necessary by the City Attorney.

**X. COMMUNICATIONS**

**A. Department Reports**

1. **Police Department — National Night Out**

Executive Director of Public Safety/Police Chief Avels invited the City Council and the community to National Night Out taking place at Alma Hofman Park the following evening at 6:30 p.m.

**B. City Attorney**

City Attorney Robbins requested the City Council meet in closed session concerning the following:

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

*Agency: City of Montclair*

*Employee Management*

*Organizations: Montclair City Confidential Employees Assn.  
Montclair General Employees Association  
Montclair Fire Fighters Association  
Montclair Police Officers Association*

**2. Closed Session Pursuant to Government Code Section 54957 Regarding Public Employee Discipline/Dismissal/Release**

**3. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation**

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

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

**C. City Manager/Executive Director — None**

**D. Mayor/Chair**

Mayor Dutrey stated this evening's meeting would be adjourned in memory of **Mr. Robert "RC Bob" Dutton, Ms. Linda Elaine Camacho, and Mr. Fred "Lico" M. Rodela.**

**E. Council Members/Directors**

1. Council Member/Director Martinez encouraged everyone to donate blood tomorrow before National Night Out, noting the blood drive runs from 2:00 p.m. through 8:00 p.m. in the Community Center.

2. Council Member/Director Johnson announced **OPARC** will be holding a two-day hiring event at its office located at 9029 Vernon Avenue, Montclair, on August 9th and 11th from 9:00 a.m. to noon and 4:00 p.m. to 7:00 p.m. on each day.

3. Council Member/Director Lopez stated he was personally acquainted with **Mr. Dutton** and **Ms. Camacho** and was sad to hear of their passing.

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

(a) He stated **Rhino Records** in Montclair will be holding a grand opening event on August 5th.

(b) He spoke fondly of **Mr. Dutton**, having worked with him when **Mr. Dutton** was president of the Inland Empire's **Building Industry Association** in 1988.

(c) He stated he was happy to learn that **Mr. George Tellez**, a former member of the Community Activities Commission, is now helping to run the **Golden Girls** softball league.

**F. Committee Meeting Minutes**

**1. Minutes of Personnel Committee Meeting of July 18, 2022**

The City Council received and filed the minutes of the Personnel Committee meeting of July 18, 2022, for informational purposes.

**XI. CLOSED SESSION**

At 10:13 p.m., the City Council went into closed session to discuss labor negotiations, public employee discipline/dismissal/release, and pending litigation.

After the City Council discussed labor negotiations and public employee discipline/dismissal/release, Council Member Lopez left the closed session and the remaining four Council Members discussed the pending litigation matter.

**XII. CLOSED SESSION ANNOUNCEMENTS**


At 10:45 p.m., the City Council returned from closed session. Mayor Dutrey announced the City Council met in closed session to discuss labor negotiations, public employee discipline/dismissal/release, and pending litigation; information was received and direction given to staff in connection with the labor negotiations and the pending litigation; in regard to the public employee discipline/dismissal/release, it was announced that the resignation of the Director of Administrative Services and Human Resources had been accepted; and no further announcements would be made at this time.

**XIII. ADJOURNMENT**

At 10:46 p.m., Mayor/Chair Dutrey adjourned the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board in memory of the following individuals:

- **Mr. Robert “RC Bob” Dutton**, San Bernardino County Assessor-Recorder-Clerk, former California State Senator, and former Rancho Cucamonga City Council Member.
- **Ms. Linda Elaine Camacho**, a longtime Montclair resident.
- **Mr. Fred “Lico” M. Rodela**, father-in-law of Community Activities Commissioner Richard A. Escalante.

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



Andrea Myrick,  
City Clerk

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

**JULY 31, 2022**

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STATEMENT OF CASH AND INVESTMENT ACCOUNTS

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CASH AND INVESTMENTS BY TYPE

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

**JULY 31, 2022**

COMPLIANCE STATEMENT

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

Total Investments \$ 32,902,893

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

INVESTMENT STRATEGY FOR THE UPCOMING MONTH

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



CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENTS BY FUND  
AS OF JULY 31, 2022

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 3,714,339.47	\$ 3,531,725.01	\$ 3,160,142.39	\$ 47,726.00	\$ 4,133,648.09 (1)
Gas Tax Fund	(301,032.42)	71,596.80	113,240.27	-	(342,675.89) (2)
Road Maintenance - Section 2032	1,201,533.56	66,831.38	425.00	-	1,269,839.94
Measure 1 Fund	4,648,749.39	63,213.51	-	-	4,711,962.90
Traffic Safety	117,987.86	11,603.15	-	-	129,601.01
Disability Access Fund - Bus. License	46,105.90	866.00	-	-	46,961.90
Park Maintenance	71,599.88	3,080.90	265.39	-	74,415.39
Park Development	1,154,807.06	-	-	-	1,154,807.06
CDBG	(16,935.45)	16,756.18	5,967.09	-	(6,146.36) (2)
SB2 Planning Grant	(20,842.50)	-	-	-	(20,842.50) (2)
Air Quality Improvement Trust	130,731.65	-	-	-	130,731.65
SB City Cares Act Infrastructure	(24,354.65)	2,472.93	15,280.76	-	(24,354.65) (2)
Senior Nutrition Program	(39,359.29)	4,794,353.00	14,088.43	-	(2,527.72) (2)
American Rescue Plan	-	439.82	-	-	439.82
Forfeiture Fund - State	118,131.78	-	-	-	118,131.78
Proposition 30/SB 109	99,845.24	-	1,104.23	-	98,741.01
SB 509 Public Safety	235,304.09	45,968.00	68,600.20	-	212,661.89
Forfeiture Fund-Federal/DOJ	309,333.43	-	-	-	309,333.43
Asset Seizure Fund	0.10	0.01	-	-	0.11
Section 11489 Subfund	42,171.46	77.61	4,208.10	-	38,040.97
Fed Asset Forfeiture-Treasury	132,180.39	-	6,733.48	-	125,446.91
School District Grant Fund	98,315.00	-	-	-	98,315.00
State Supplemental Law Enforce	410,221.33	-	-	-	410,221.33
Local Law Enforcement Block Gr	15,005.00	-	-	-	15,005.00
PC 1202.5 Crime Prevention	2,278.14	14.78	-	-	2,292.92
Recycling Grant Fund	76,217.67	-	-	-	76,217.67
Homeless Emergency Aid Program	(261.41)	-	-	-	(261.41) (2)
Bureau of Justice Assistance	(111.00)	-	-	-	(111.00) (2)
Slatewide Park Dev Grant	180,634.00	-	-	-	180,634.00
Homeless Housing Assist Preven	32,550.05	-	9,638.43	-	22,911.62 (2)
LEAP Grant	(42,097.75)	-	8,112.50	-	(50,210.25) (2)
After School Program Fund	714,457.95	-	141,434.34	-	573,023.61
OTS Grant	-	-	-	-	-
FIRST 5 Fund	1,290.78	-	-	-	1,290.78
Safety Dept. Grants	287,515.52	-	7,009.61	-	280,505.91
OSMD Immunization Grant	1,370.50	-	-	-	1,370.50 (2)
Kaiser Permanente Grant	4,187.22	-	-	-	4,187.22
Resource Center Grant - OMSD	19,590.60	-	3,215.29	-	16,375.31
Title III Sr Support Services	(3,432.10)	-	2,677.98	-	(6,110.08) (2)
Community Foundation Grant	15,107.19	-	-	-	15,107.19
ASES Supplemental Grant	147,591.80	-	2,500.24	-	144,691.56
E.M.S. - Paramedic Fund	9,386.69	5,037.61	2,314.42	-	12,109.88 (3)
Economic Development	4,908,798.89	-	80,317.83	-	4,828,481.06
City Contributions/Donations Fund	500.00	-	-	-	500.00
Sewer Operating Fund	2,577,925.54	427,767.95	332,192.54	-	2,673,500.95
Sewer Replacement Fund	2,244,611.29	-	-	-	2,244,611.29
CFD 2011-1 (Paseos)	165,998.03	-	39,403.56	-	126,594.47
CFD 2011-2 (Arrow Station)	89,959.55	130.83	-	-	90,090.38
Inland Empire Utility Agency	3,884,380.82	-	-	-	3,884,380.82
Sewer Expansion Fee Fund	852,203.83	-	-	-	852,203.83
Developer Impact Fees - Local	1,172,464.90	82,368.00	-	-	1,254,832.90
Developer Impact Fees - Regional	77,950.83	185,724.00	-	-	263,674.83
Burtec Pavement Impact Fees	158,349.61	19,446.61	-	-	177,796.22
PUC Reimbursement Fund-MVGS	324,111.38	-	-	-	324,111.38
Utility Underground In-Lieu	340,516.52	21,440.00	-	-	361,956.52
General Plan Update Fee	100,121.55	3,697.18	-	-	104,018.73
Housing Fund	555,708.20	-	-	-	555,708.20
Public Education/Govt. PEG Fee Fund	(756,848.89)	-	195,332.99	-	(561,515.90) (4)
Infrastructure Fund	(102,423.71)	-	17,097.94	-	(85,325.77) (4)
COVID-19	4,802,562.13	-	-	-	4,802,562.13
Successor Agency Bonds-Taxable	7,997,942.62	8,991.40	11,392.00	-	8,000,326.02
2014 Lease Revenue Bond Proceeds	(284,588.74)	14,998.92	-	-	(269,589.82)
2021 Lease Revenue Bond Proceeds	(267,546.87)	-	34,417.47	-	(233,129.40)
2014 Lease Revenue Bond Debt Svc	(525,320.11)	345,205.60	-	-	(180,114.51) (5)
2021 Lease Revenue Bond Debt Svc	1,725,255.75	-	-	-	1,725,255.75
Pension Obligation Bond Debt Svc	(3,500.00)	-	-	-	(3,500.00)
Contingency Fund	0.96	-	-	-	0.96
Assigned General Fund Reserves	20,090,987.26	23,240.75	1,260,136.67	(47,726.00)	18,806,365.34 (1)
TOTALS	\$ 63,798,307.42	\$ 9,749,227.93	\$ 5,537,649.15	\$ -	\$ 68,009,886.20

Negative Cash Notes follow this presentation.

### **Notes on Negative Cash Balances**

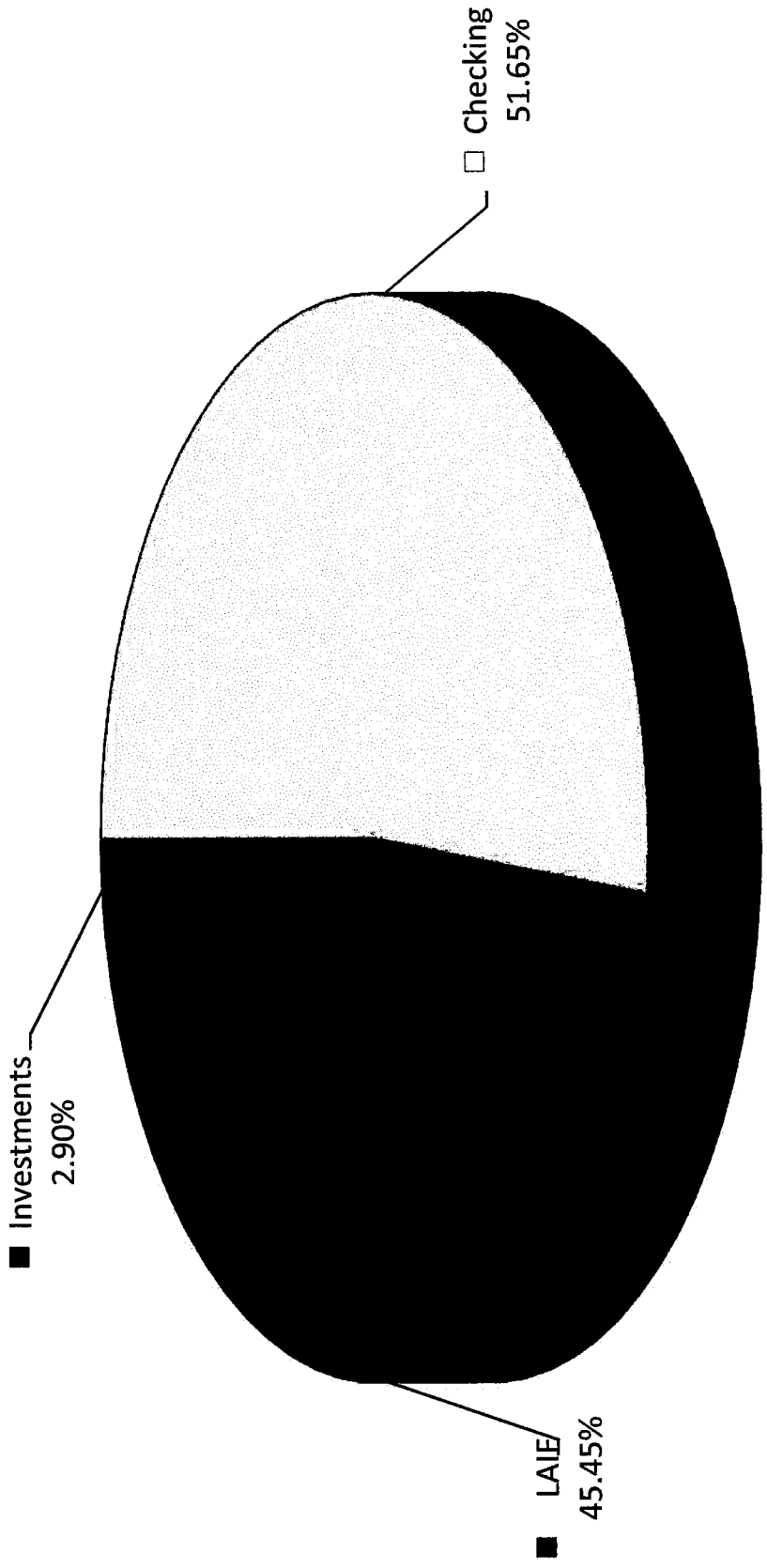
- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this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

**CITY OF MONTCLAIR  
STATEMENT OF CASH AND INVESTMENT ACCOUNTS  
AS OF JULY 31, 2022**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
<b>CHECKING ACCOUNT</b>							
Checking Account							\$ 35,104,524.04
Asset Seizure Account							\$ 2,468.76
<b>CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES</b>							
Local Agency Investment Fund (LAIF)				1.170%	30,823,754.80	30,902,893.40	
First American Government					2,000,000.00	2,000,000.00	
					<u>\$ 32,823,754.80</u>		\$ 32,902,893.40
<b>U.S. AGENCY SECURITIES</b>							
					\$ -		\$ -
<b>TOTAL</b>							<u>\$ 68,009,886.20</u>

Current market values obtained from US Bank.

**CITY OF MONTCLAIR**  
**CASH AND INVESTMENTS BY TYPE**  
July 31, 2022  
Total Cash & Investments \$68,009,886



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

**FOR THE MONTH ENDING**

**July 31, 2022**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH BY FUND  
July 31, 2022**

**COMBINED OPERATING FUND**

Operating	<u>(21,548.25)</u>	\$	(21,548.25)
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**LRPRP Fund**

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

	1,122,307.84		
RORF Area I	0.00		
RORF Area II	0.00		
RORF Area III	0.00		
RORF Area IV	0.00		
RORF Area V	0.00		
RORF Area VI	0.00	\$	1,122,307.84

**TOTAL CASH**

**\$ 1,100,759.59**

**CITY OF MONTCLAIR AS SUCCESSOR TO  
THE REDEVELOPMENT AGENCY  
STATEMENT OF CASH  
July 31, 2022**

**Checking Account**

US Bank

**1,100,759.59**

**TOTAL CASH**

**1,100,759.59**

**NOTE:**

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

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

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

**FOR THE MONTH ENDING**

**July 31, 2022**



City of Montclair  
 Final Warrant Register  
 Council Date 08/15/2022  
 Regular Warrants  
 Checking Account: Successor to the RDA

	Warrants	US Bank transfers	Area Totals
SRDA Combined Operating Fund	0.00	6,121.49	<b>6,121.49</b>
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	<b>0.00</b>
	0.00	6,121.49	
<b>July 2022 Total</b>			<b>6,121.49</b>

Note: Reimburse City for 7/7 payrolls  
 Reimburse City for 7/21 payrolls

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**Vice Chair Ruh**

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 07/01/2022 To 07/29/2022

Printed on 08/04/2022 at 4:25 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/21/2022	\$2739.99	153499275813	153499275805	Completed

**Debit Account Name** CITY OF MONTCLAIR SUCCESSOR AGENCY  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 07/21/2022 Payroll  
**Initiate Date** 07/21/2022  
**Initiate Time** 10:46AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 07/21/2022  
**Completed Time** 10:46AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/07/2022	\$3381.50	153499275813	153499275805	Completed

**Debit Account Name** CITY OF MONTCLAIR SUCCESSOR AGENCY  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 07/07/22 Payroll  
**Initiate Date** 07/07/2022  
**Initiate Time** 10:30AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 07/07/2022  
**Completed Time** 10:30AM CDT

**Total Number of Book Transfers:** 2  
**Total Amount of Book Transfers:** \$6,121.49

--- End of Report ---

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

**July 31, 2022**

**TABLE OF CONTENTS**

**SCHEDULE 1 - STATEMENT OF CASH AND INVESTMENTS**

**CASH AND INVESTMENTS GRAPH**

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
STATEMENT OF CASH AND INVESTMENTS  
July 31, 2022**

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
<b>Checking Account</b>			
US Bank			287,891.98
<b>Investments</b>			
LAIF	1.17%	1,696,231.16	<u>1,718,354.27</u>
<b>TOTAL CASH &amp; INVESTMENTS</b>			<b><u><u>2,006,246.25</u></u></b>

**NOTE:**

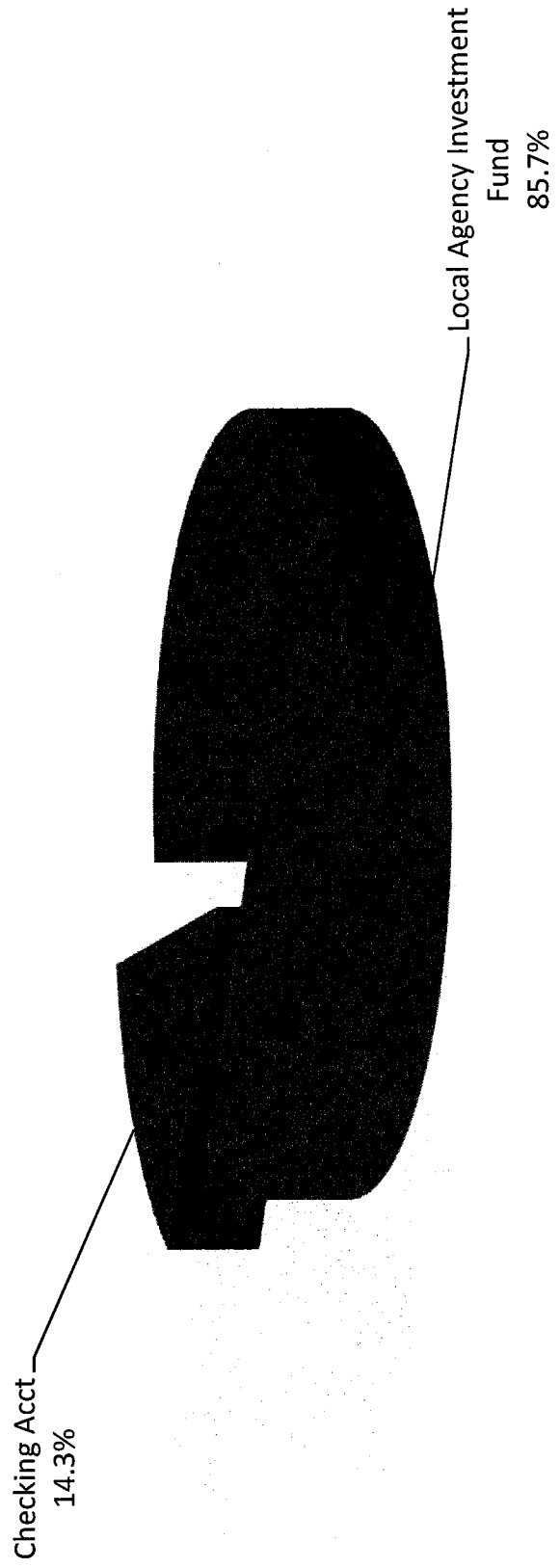
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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

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

**CITY OF MONTCLAIR  
HOUSING CORPORATION  
CASH AND INVESTMENTS GRAPH  
July 31, 2022**

**Total Cash & Investments - \$2,006,246**



**CITY OF MONTCLAIR  
HOUSING CORPORATION  
WARRANT REGISTER**

**FOR THE MONTH ENDING**

**July 31, 2022**

City of Montclair  
Final Warrant Register  
Council Date 08/15/2022  
Regular Warrants  
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
26,269.49	0.00	0.00	5,731.30	<b>32,000.79</b>

**July 2022 Total** 32,000.79

US Bank transfers:  
Reimburse City for 07/7 payroll

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**Vice Chair Ruh**



# Accounts Payable

## Checks by Date - Summary by Check Number

User: cramirez  
Printed: 8/4/2022 4:16 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5351	Buch002	Buchbinder Maintenance, Inc.	07/07/2022	6,427.42
5352	Perf003	Performance Construction & Remodeling I	07/07/2022	13,625.00
5353	mont002	City of Montclair	07/21/2022	1,620.84
5354	mont074	Monte Vista Water District	07/21/2022	1,831.21
5355	sout018	Southern California Edison Co	07/21/2022	958.10
5356	sout021	Southern California Gas Co	07/21/2022	649.28
5357	ACI0001	ACI Flooring, Inc.	07/21/2022	1,157.64
Report Total (7 checks):				26,269.49

# Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 07/01/2022 To 07/29/2022

Printed on 08/04/2022 at 4:25 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
07/07/2022	\$5731.30	153499275821	153499275805	Completed

**Debit Account Name** MONTCLAIR HOUSING CORPORATION  
**Debit Account Type** DDA  
**Credit Account Name** CITY OF MONTCLAIR GENERAL ACCOUNT  
**Credit Account Type** DDA  
**Template Name** .  
**Memo** Reimburse City for 07/07/22 Payroll  
**Initiate Date** 07/07/2022  
**Initiate Time** 10:30AM CDT  
**Initiated By** JKULBECK  
**Completed Date** 07/07/2022  
**Completed Time** 10:30AM CDT

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**Total Number of Book Transfers:** 1  
**Total Amount of Book Transfers:** \$5,731.30

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--- End of Report ---

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
TREASURER'S REPORT  
FOR THE MONTH ENDING  
July 31, 2022**

**Schedule 1**

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
STATEMENT OF CASH  
July 31, 2022**

	<u>Amount</u>
<b>Checking Account</b>	
US Bank	3,178,959.69
<b>TOTAL CASH</b>	<b>\$ <u>3,178,959.69</u></b>

**NOTE:**

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

**CITY OF MONTCLAIR  
HOUSING AUTHORITY  
WARRANT REGISTER  
FOR THE MONTH ENDING  
July 31, 2022**

City of Montclair  
Final Warrant Register  
Council Date 08/15/2022  
Regular Warrants  
Checking Account: MHA

<u>Warrants</u>	<u>Voided Checks</u>	<u>US Bank transfers - out.</u>	<u>Totals</u>
0.00	0.00	0.00	0.00
<b>July 2022 Total</b>			<b><u><u>0.00</u></u></b>

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**Vice Chair Ruh**