

CITY OF MONTCLAIR

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

AGENDA

MONDAY, SEPTEMBER 19, 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, September 19, 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 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**
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**
- V. PRESENTATIONS**
 - A.** Presentation of Annual Donation by the Montclair Chamber of Commerce to the Montclair Community Foundation for the Montclair to College Program
 - B.** Training and Education Program by Southwest Regional Council of Carpenters
- VI. PUBLIC COMMENT**

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

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

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

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

A. Approval of Minutes

- 1. Regular Joint Meeting — August 15, 2022 [CC/SA/MHC/MHA/MCF] 169

B. Administrative Reports

- 1. Consider Receiving and Filing of Treasurer’s Report [CC] 5
- 2. Consider Approval of Warrant Register & Payroll Documentation [CC] 6
- 3. Consider Receiving and Filing of Treasurer’s Report [SA] 7
- 4. Consider Approval of Warrant Register [SA] 8
- 5. Consider Receiving and Filing of Treasurer’s Report [MHC] 9
- 6. Consider Approval of Warrant Register [MHC] 10
- 7. Consider Receiving and Filing of Treasurer’s Report [MHA] 11
- 8. Consider Approval of Warrant Register [MHA] 12

- 9. Consider Authorizing a \$43,592.30 Allocation from the Economic Development Agency Fund for the Purchase of a 2022 Nissan Pathfinder from Metro Nissan Montclair for Use by the Economic Development Agency [CC]

Consider Authorizing a \$33,894.80 Allocation from the Air Quality Improvement Fund for the Purchase of a 2022 Nissan Rogue From Metro Nissan Montclair for Use by the Administrative Services Department [CC]

Consider Declaring a 2000 Toyota Camry CNG (Unit 102) as Surplus and Available for Parts or for Sale at Auction [CC] 13

- 10. Consider Receiving and Filing the 2022 Local Agency Biennial Notice and Directing Staff to Amend the City’s Conflict of Interest Code Pursuant to the Political Reform Act [CC] 15

- 11. Consider Authorizing the Destruction of Certain Obsolete Public Records Pursuant to the City of Montclair Records Retention Schedule [CC] 19

C. Agreements

- 1. Consider Approval of Agreement No. 22-81 with the Christian Development Center to Provide Case Management Services for the Homeless Program [CC]

Consider Authorizing a \$19,800 Appropriation from the Contingency Reserve Fund for Costs Related to Agreement No. 22-81 [CC] 22

- 2. Consider Approval of Agreement No. 22-83 with CRP/VP Montclair Village Owner, LLC., an Operations and Management Regulatory Agreement Regarding the Property Located at 5040-5050 Arrow Highway, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 40

- 3. Consider Approval of Agreement No. 22-93 with Records Control Services, Inc. for Records Management Consulting Services (Inventory Assessment, Updated Retention Policy, and Strategic Roadmap) [CC] 63

4. Consider Approval of Agreement No. 22-94 with CRP/VP Montclair Village Owner, LLC., for Construction and Dedication of Parkland, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 90
5. Consider Approval of Agreement No. 22-95 with University Enterprises Corporation at California State University San Bernardino to Provide Technical Assistance and Outreach Services to Small Businesses, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 112
6. Consider Approval of Agreement No. 22-96 with the International Language School for Children & Adults (ILSCA) for Language Testing Services [CC] 120
7. Consider Approval of Agreement No. 22-97, Amendment No. 3 to Agreement No. 95-73, as Amended, with Diane E. Robbins of Robbins & Holdaway, a Professional Corporation, to Continue Providing Legal Services to the City of Montclair, Montclair Successor Redevelopment Agency, Montclair Housing Corporation, Montclair Housing Authority and Other City-Related Legal Entities [CC/SA/MHC/MHA/MCF] 127
8. Consider Approval of Agreement No. 22-100 with the San Bernardino County District Attorney's Office to Station a Victim's Advocate at the Police Department, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 135
9. Consider Approval of Agreement No. 22-103, Amending Agreement No. 19-103 with the City of West Covina and Mark 43 for CAD/RMS Updates and Services, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]
Consider Authorizing a \$10,000 Expenditure from the SB 509 Public Safety Fund for Costs Associated with Agreement No. 22-103 [CC] 146
10. Consider Amending the 2019-2024 Capital Improvement Program to Add the CDBG Target Area Alley Improvements Project [CC]
Consider Authorizing an \$849,440 Appropriation from Community Development Block Grant (CDBG) Funds for Costs Related to the CDBG Target Area Alley Improvements Project [CC]
Consider Authorization to Advertise for Bid Proposals for the CDBG Target Area Alley Improvements Project [CC]
Consider Authorizing the City Manager to Award Agreement No. 22-104 for Construction of the CDBG Target Area Alley Improvements Project [CC] 152

D. Resolutions

1. Consider Adoption of Resolution No. 22-3377 Making Factual Findings in Compliance with AB 361 for the Continuation of Public Meeting Teleconferencing During Public Health Emergencies for the Period of September 19, 2022, through October 19, 2022 [CC] 156
2. Consider Adoption of Resolution No. 22-3379 Approving a Five-Year Capital Project Needs Analysis for Fiscal Years 2023-24 Through 2027-28 [CC] 160

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 54957.6 Regarding Conference with Designated Labor Negotiator Edward C. Starr [CC]

Agency: City of Montclair
Employee Management
Associations: Montclair City Confidential Employees Association
Montclair General Employees Association
Montclair Fire Fighters Association
Montclair Police Officers Association

2. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation [CC]

George v. City of Montclair

C. City Manager/Executive Director

D. Mayor/Chairperson

1. Announcement of a Community Stakeholder Meeting of the City Council, Planning Commission, and Community Activities Commission on Monday, September 26, 2022, at 6:00 p.m. in the Senior Center Hosted by KTUA to Discuss the Parks and Recreation Master Plan

E. Council Members/Directors

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

1. Public Works Committee Meeting — May 19, 2022 [CC] 163
2. Personnel Committee Meeting — August 15, 2022 [CC] 168

XI. CLOSED SESSION

XII. CLOSED SESSION ANNOUNCEMENTS

XIII. ADJOURNMENT

The next regular joint meeting of the City Council, Successor Agency Board, Montclair Housing Corporation Board, Montclair Housing Authority Commission, and Montclair Community Foundation Board will be held on Monday, October 3, 2022, at 7:00 p.m.

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

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/agendas/> and on the bulletin board adjacent to the north door of Montclair City Hall at 5111 Benito Street, Montclair, CA 91763 on Thursday, September 15, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN520
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	J. KULBECK
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN540
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	FINANCE
ITEM NO.:	2	PREPARER:	L. LEW/V. FLORES
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER AND PAYROLL DOCUMENTATION		

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

BACKGROUND: Mayor Pro Tem Ruh has examined the Warrant Register dated September 6, 2022; the Warrant Register dated September 19, 2022; and the Payroll Documentations dated July 31, 2022, and August 14, 2022, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated September 6, 2022, totals \$2,594,308.17.

The Warrant Register dated September 19, 2022, totals \$876,531.79.

The Payroll Documentation dated July 31, 2022 totals \$693,157.80 gross, with \$496,350.56 net being the total cash disbursement.

The Payroll Documentation dated August 14, 2022 totals \$720,818.31 gross, with \$504,971.85 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN510
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	3	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN530
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	SA
ITEM NO.:	4	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

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

BACKGROUND: Vice Chair Ruh has examined the Successor to the Redevelopment Agency Warrant Register dated 08.01.22-08.31.22 in the amounts of \$7,167.14 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 August 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	5	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHC
ITEM NO.:	6	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

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

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 08.01.22-08.31.22 in the amount of \$82,137.70 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 August 31, 2022.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN525
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	7	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER RECEIVING AND FILING OF TREASURER'S REPORT		

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



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FIN545
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	MHA
ITEM NO.:	8	PREPARER:	C. RAMIREZ
SUBJECT:	CONSIDER APPROVAL OF WARRANT REGISTER		

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

BACKGROUND: Vice Chair Ruh has examined the Warrant Register dated 08.01.22-08.31.22 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 August 31, 2022.

In addition, staff is recommending that the 2000 Toyota Camry CNG (Unit 102, VIN JT2BN22KXY0001052), originally purchased for the Montclair Housing Corporation and currently in use by the Economic Development Agency, be declared as surplus and available for parts or for sale at auction due to the age of the vehicle and mechanical issues stemming from the vehicle being one of the first CNG vehicles on the market.

FISCAL IMPACT: If authorized by the City Council, funding for the purchase of one 2022 Nissan Pathfinder would result in an expenditure of \$43,592.30 payable from the Economic Development Agency Fund, and funding for the purchase of one 2022 Nissan Rogue would result in an expenditure of \$33,894.80 payable from the Air Quality Improvement Fund.

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

1. Authorize a \$43,592.30 allocation from the Economic Development Fund for the purchase of a 2022 Nissan Pathfinder from Metro Nissan Montclair for use by the Economic Development Agency.
2. Authorize a \$33,894.80 allocation from the Air Quality Improvement Fund for the purchase of a 2022 Nissan Rogue from Metro Nissan Montclair for use by the Administrative Services Department.
3. Declare a 2000 Toyota Camry CNG as surplus and available for parts or for sale at auction.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	FPP150
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	10	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER RECEIVING AND FILING THE 2022 LOCAL AGENCY BIENNIAL NOTICE AND DIRECTING STAFF TO AMEND THE CITY'S CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT		

REASON FOR CONSIDERATION: The City Council is the designated code-reviewing body for the City's Conflict of Interest Code. It is necessary to review the Conflict of Interest Code on a biennial basis, which includes the filing of a Local Agency Biennial Notice and amending the Code to update the list of designated employees who are required to file Statements of Economic Interests and to incorporate any other necessary changes.

The 2022 Local Agency Biennial Notice is attached and hereby submitted to the City Council for filing.

BACKGROUND: Pursuant to the Political Reform Act of 1974 (Government Code §8100, et seq.), all public agencies are required to adopt a Conflict of Interest Code. A Conflict of Interest Code designates positions required to annually file Statements of Economic Interest (Fair Political Practices Commission [FPPC] Form 700), and assigns disclosure categories specifying the types of interests to be reported. The Form 700 is a public document intended to alert public officials and members of the public to the types of financial interests that may create conflicts of interest.

The City of Montclair Conflict of Interest Code, first adopted on October 4, 1976, contains the requirement that all City Council Members, Planning Commissioners, City Manager, City Attorney, and designated employees responsible for managing public investments annually file Statements of Economic Interests. In addition, the Code requires that there be a listing of designated employees who, by job title, "make or participate in the making of governmental decisions which may have a foreseeable material effect on financial interests."

At its meeting on June 20, 2022, the City Council adopted Resolution No. 22-3358 directing staff to perform a review of the City's Conflict of Interest Code and submit the 2022 Local Agency Biennial Notice to the City Council.

Staff has reviewed the Conflict of Interest Code and has completed the Biennial Notice, which notes that areas of the Code require amendments. The 2022 Local Agency Biennial Notice must be filed by October 1, 2022, affirming that this review has been completed and indicating the actions required to be taken.

The City Council is required to adopt amendments to the Conflict of Interest Code within 90 days of the filing of the Biennial Notice. Staff anticipates the amendments to the Conflict of Interest Code will be submitted for adoption on or before the City Council's first regular meeting in December to meet the 90-day deadline.

FISCAL IMPACT: There would be no fiscal impact associated with the City Council's actions of receiving and filing of the Biennial Notice and directing staff to amend the City's Conflict of Interest Code.

RECOMMENDATION: Staff recommends the City Council receive and file the 2022 Local Agency Biennial Notice and direct staff to amend the City's Conflict of Interest Code pursuant to the Political Reform Act.

2022 Local Agency Biennial Notice

Name of Agency: City of Montclair
Mailing Address: 5111 Benito Street, Montclair, CA 91763
Contact Person: Andrea Myrick Phone No. (909) 625-9416
Email: amyrick@cityofmontclair.org Alternate Email: cityclerk@cityofmontclair.org

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government. The biennial review examines current programs to ensure that the agency's code includes disclosure by those agency officials who make or participate in making governmental decisions.

This agency has reviewed its conflict of interest code and has determined that *(check one BOX)*:

An amendment is required. The following amendments are necessary:

(Check all that apply.)

- Include new positions
- Revise disclosure categories
- Revise the titles of existing positions
- Delete titles of positions that have been abolished and/or positions that no longer make or participate in making governmental decisions
- Other *(describe)* _____

The code is currently under review by the code reviewing body.

No amendment is required. (If your code is over five years old, amendments may be necessary.)

Verification (to be completed if no amendment is required)

This agency's code accurately designates all positions that make or participate in the making of governmental decisions. The disclosure assigned to those positions accurately requires that all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions are reported. The code includes all other provisions required by Government Code Section 87302.

Signature of Chief Executive Officer

Date

All agencies must complete and return this notice regardless of how recently your code was approved or amended. Please return this notice no later than **October 3, 2022**, or by the date specified by your agency, if earlier, to:

(PLACE RETURN ADDRESS OF CODE REVIEWING BODY HERE)

PLEASE DO NOT RETURN THIS FORM TO THE FPPC.

www.fppc.ca.gov
FPPC Advice: advice@fppc.ca.gov (866.275.3772)
Page 1 of 1

2022 Conflict of Interest Code Biennial Notice Instructions for Local Agencies

The Political Reform Act requires every local government agency to review its conflict of interest code biennially. A conflict of interest code tells public officials, governmental employees, and consultants what financial interests they must disclose on their Statement of Economic Interests (Form 700).

By **July 1, 2022**: The code reviewing body must notify agencies and special districts within its jurisdiction to review their conflict of interest codes.

By **October 3, 2022**: The biennial notice must be filed with the agency's code reviewing body.

The FPPC has prepared a 2022 Local Agency Biennial Notice form for local agencies to complete or send to agencies within its jurisdiction to complete before submitting to the code reviewing body. The City Council is the code reviewing body for city agencies. The County Board of Supervisors is the code reviewing body for county agencies and any other local government agency whose jurisdiction is determined to be solely within the county (e.g., school districts, including certain charter schools). The FPPC is the code reviewing body for any agency with jurisdiction in **more than one county** and will contact them.

The Local Agency Biennial Notice is not forwarded to the FPPC.

If amendments to an agency's conflict of interest code are necessary, the amended code must be forwarded to the code reviewing body for approval within 90 days. An agency's amended code is not effective until it has been approved by the code reviewing body.

If you answer yes, to any of the questions below, your agency's code probably needs to be amended.

- Is the current code more than five years old?
- Have there been any substantial changes to the agency's organizational structure since the last code was approved?
- Have any positions been eliminated or re-named since the last code was approved?
- Have any new positions been added since the last code was approved?
- Have there been any substantial changes in duties or responsibilities for any positions since the last code was approved?

If you have any questions or are still not sure if you should amend your agency's conflict of interest code, please contact the FPPC. Additional information including an online webinar regarding how to amend a conflict of interest code is available on [FPPC's website](#).



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	CCK280
SECTION:	CONSENT - ADMIN. REPORTS	DEPT.:	CITY MGR./CITY CLERK
ITEM NO.:	11	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER AUTHORIZING THE DESTRUCTION OF CERTAIN OBSOLETE PUBLIC RECORDS PURSUANT TO THE CITY OF MONTCLAIR RECORDS RETENTION SCHEDULE		

REASON FOR CONSIDERATION: 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 Administrative Services and Human Services Departments.

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. This allowed the City to free up office space used solely for the storage of boxes of records, and to reduce the costs of off-site records storage for hundreds of boxes of obsolete documents. While the practice of administratively destroying obsolete records was successful in reducing storage costs and has been used by many cities over the past decade, recent legal attention to the practice have resulted in a return to using the City Council approval process for the destruction of obsolete records in accordance with the Records Retention Schedule on a periodic basis.

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

RECOMMENDATION: Staff recommends the City Council authorize the destruction of certain obsolete public records pursuant to the 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

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<i>Record type & Retention Period</i>	<i>Description of Records</i>	<i>Period covered</i>	<i>Additional Notes</i>
Liability Forms; CU+2	weight room & racquetball sign-in sheets	7/30/2017 to 3/12/2020	
Activity/Project Files; CU+2	HS Key Sign-Out Logs	2017 to 2019	
Leave Reports; CU+6	Time Off Request Forms	2015	
Activity/Project Files; CU+2	HS Vehicle Check-Out Logs	2019	
Activity/Project Files; CU +2	Racquetball Reservation Sheets	8/2017 to 2/2020	
Registration CU+4; Liability Forms CU+2	Recreation Program/Class Registration Cards with liability form on the back	2015 to 2017	

Approval for destruction of listed records:

Dept. Records Manager:	<u>Alyssa Colunga</u>	Date:	<u>8/15/22</u>
Department Head:	<u>M. Richter</u>	Date:	<u>8/16/22</u>
City Clerk:	<u>Quincy...</u>	Date:	<u>9/8/22</u>
City Attorney:	_____	Date:	_____



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 19, 2022 **FILE I.D.:** HSV046/GRT085
SECTION: CONSENT - AGREEMENTS **DEPT.:** COMMUNITY DEV.
ITEM NO.: 1 **PREPARER:** A.COLUNGA/G. FONDARIO
SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-81 WITH THE CHRISTIAN DEVELOPMENT CENTER TO PROVIDE CASE MANAGEMENT SERVICES FOR THE HOMELESS PROGRAM

CONSIDER AUTHORIZING A \$19,800 APPROPRIATION FROM THE CONTINGENCY RESERVE FUND FOR COSTS RELATED TO AGREEMENT NO. 22-81

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-81 with the Christian Development Center for case management services for the Homeless Program and authorization of a \$19,800 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 22-81.

BACKGROUND: The Special Operations Unit (SOU) of the Montclair Code Enforcement Division has primary responsibility in working with homeless individuals within the City. SOU seeks to implement its comprehensive approach to address homelessness by working with individuals to offer a variety of options, resources, and enforcement actions tailored as much as possible to their situations. As part of their daily efforts, SOU relies on assistance from other partner groups or organizations that have the same goal of helping to end homelessness, such as the Christian Development Center. Agreement No. 22-81 would formalize the relationship the City has had with the Christian Development Center and enable their continued assistance in the City's implementation of the Homeless Program.

The Christian Development Center is a non-profit organization led by Pastors Don and Ethel Rucker who, since January 2020, have served as key partners in providing needed case management for individuals referred to them by SOU. The Christian Development Center has demonstrated their commitment in assisting the City with the implementation of the Homeless Program in an empathetic and effective process through the services they provide. The Christian Development Center is available 24 hours a day, seven days a week, and provides a wide range of services. Examples of services provided by the Christian Development Center include the following: on-site interventions, counseling services, navigation of appropriate resources, rental assistance, transportation services, establishing and maintaining rapport with collaborating agencies and organizations, providing food, clothing, and hygiene items to needy individuals and families, as well as responding to calls for service and/or crisis situations as needed by the SOU.

The estimated cost for case management services for a nine-month term is \$45,000 (\$5,000 per month) to be paid primarily with the funds made available through the City's award of funds through the *Homeless Housing Assistance & Prevention, Round 2* (HHAP-2) grant. The remaining amount not paid by the HHAP-2 grant would be paid by the City's Contingency Reserve Fund.

FISCAL IMPACT: If the City Council approves Agreement No. 22-81, \$5,000 would be paid monthly for nine months to the Christian Development Center for case management services. Further, \$28,000 would be funded through the HHAP-2 grant funding and \$19,800 being would be paid through the Contingency Reserve Fund. The term of Agreement No. 22-81 is October 1, 2022 through June 30, 2023.

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

1. Approve Agreement No. 22-81 with the Christian Development Center to provide case management services for the Homeless Program.
2. Authorize a \$19,800 appropriation from the Contingency Reserve Fund for costs related to Agreement No. 22-81.

CITY OF MONTCLAIR
AGREEMENT FOR CONSULTANT SERVICES
HOMELESS PROGRAM – CASE MANAGEMENT SERVICES

THIS AGREEMENT is made and effective as of October 1, 2022 between the City of Montclair, a municipal corporation ("City") and Christian Development Center, a 501(c)(3) non-profit organization ("Consultant").

WHEREAS, the City and the County of San Bernardino Office of Homeless Services (OHS), hereinafter referred to as "County," have entered into an Agreement which authorizes the City to provide certain services, said City Agreement being No. 22-90 signed August 15, 2022; and

WHEREAS, the aforesaid Agreement provides that the City may subcontract for certain professional services subject to prior County approval; and

WHEREAS, the City desires to engage the Consultant to provide professional services as detailed elsewhere in this Agreement; and

WHEREAS, the Consultant desires to perform and provide such services and hereby agrees to comply with all applicable requirements provided in the City's Agreement No. 22-90 with the County, CONTRACTOR RESPONSIBILITIES and GENERAL CONTRACT REQUIREMENTS sections.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the City and the Consultant agree as follows:

1. **TERM**

This Agreement shall commence on October 1, 2022 and shall remain and continue in effect for a period of nine months until tasks described herein are completed, but in no event later than June 30, 2023 unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in

providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. CITY MANAGEMENT

City's Community Development Director shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to be Performed or change the compensation due to Consultant. City's Community Development Director 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. This amount is subject to receipt of grant funding and shall not exceed \$45,000 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

(c) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

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

7. DEFAULT OF CONSULTANT

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

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. OWNERSHIP OF DOCUMENTS

(a) Consultant shall maintain complete and accurate records with respect to billed time, sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, claims, applications, computer files, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

9. INDEMNIFICATION

(a) Defense, Indemnity and Hold Harmless. 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

(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) **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 \$100,000 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.
- (2) **Workers' Compensation:** If applicable, 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.

(b) **Endorsements**

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

- (1) The insurance coverages required by Section (a)(1) Automobile Liability Insurance shall contain the following provisions or be endorsed to provide the following:

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 performance of the Contract. 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 Contract)

- (2) The policy or policies of insurance required by Section (a)(2) Workers' Compensation shall be endorsed, as follows:

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.

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.

(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 or benefits 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.

(c) In regard to the professional services provided by Consultant and defined in Exhibit "A," City and Consultant specifically agree as follows:

- (1) While Consultant may perform certain services at the premises of City, Consultant is not required to do so and may perform services at its separate business location.
- (2) With the exception of agreed upon project completion dates and the agreement the Consultant will be available at reasonable business hours, the Consultant shall have the ability to set his/her own hours of operation.
- (3) Consultant represents that the services he/she performs under this Agreement are the same services Consultant is customarily engaged in

his/her business. City acknowledges that Consultant does not perform services exclusively for City and that Consultant performs or is available to perform these same services to other clients.

- (4) Consultant will use his/her own discretion and independent judgment in the performance of the services rendered for City under the terms of this Agreement.

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 covenants that neither he/she nor any office 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.

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

To Consultant: Donald Rucker, President
Christian Development Center
5080 Kingsley Street
Montclair, CA 91763

17. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City.

Consultant's responsible employee may use assistants, under his direct supervision, to perform some of the services under this Agreement. Consultant shall provide City fourteen (14) days' notice prior to the departure of the responsible employee from Consultant's employ. Should he leave Consultant's employ, the City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

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. 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.

22. 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.

23. 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.

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

CITY OF MONTCLAIR

CHRISTIAN DEVELOPMENT CENTER

By: _____
Javier John Dutrey, Mayor

By: _____
Donald Rucker, President

Date: _____

Date: _____

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney

EXHIBIT A

DEFINITIONS

HOMELESS OUTREACH. Proactive exploration and engagement of homeless individuals and/or families either occupying or migrating through various portions of the City.

NAVIGATION OF SERVICES. Exploration and enrollment (of homeless individuals) into various programs and services based on individual needs. Including but not limited to: Drug and Alcohol rehabilitation programs, financial assistance, medical and mental health resources, assistance to social services programs, temporary and permanent housing, and transportation services.

HANDS-ON CASE MANAGEMENT. One-on-one intervention with homeless individuals and/or families, including, but not limited to, navigation of services and development of personalized plans and strategies needed to overcome obstacles, obtain, and sustain long-term housing.

PAROLE/PROBATION INTERVENTION. Interaction with Parole and Probation Officers regarding status of homeless individuals on supervised release programs and assistance in obtaining available housing and participating in rehabilitation programs offered by Parole and Probation Departments (including authorization to place said individuals into programs and facilities that cross county lines).

IN-HOUSE REHABILITATION CENTERS. Facilities that provide “In-Patient” Drug and Alcohol treatment programs necessary to overcome addiction to said substances.

QUALIFYING CRITERIA. Requirements for entering various in-house rehabilitation facilities and/or housing programs.

COURT APPOINTED OBLIGATIONS. Mandated drug and alcohol treatment programs as well as mandated counseling services and/or classes (including, but not limited to, Anger Management, Parenting Classes, Behavior Modification, Domestic Violence, Driving under the Influence, etc.).

MONTCLAIR’S TRAILER PROGRAM. In accordance with the City’s Homeless Program, Metro Honda of Montclair purchases recreational trailers for homeless individuals and/or families in an effort to provide temporary, transitional, and affordable housing.

ADEQUATE SUPPLIES OF FOOD/MISCELLANEOUS ITEMS. Enough food, clothing, and other miscellaneous items needed to sustain individuals and/or families participating in programs or transitioning into temporary/permanent housing for a determined amount of time.

SERVICES PROVIDED

During the term of this Agreement and in accordance with Section 2, CDC shall provide the services described below:

1. Hands-on Case Management services for individuals and/or families experiencing homelessness or at imminent risk of experiencing homelessness. CDC provides a wide-range of services and are available 24 Hours a Day/7 Days a Week. Said services include, but are not limited to:

- Accompanies the City's Special Operations Unit on Homeless Outreach Details a minimum of two times per week as well as responds to special requests/calls for service from said unit regarding homeless individuals and/or families in need of assistance.
 - Provides on-site counseling and/or case management services to individuals both willing and reluctant to accept services. Said services include, but are not limited to, comprehensive interviews and information gathering. Outreach and intervention with family members, friends, and social workers if applicable. Navigation of services based on individual needs, including, but not limited to, in and out-patient drug and alcohol programs, medical and/or mental health assessments, domestic violence referrals (including transportation to safe houses), intervention and placement of said individuals through Adult Protective Services, assessment of prescribed and/or needed medications, Parole and Probation intervention, as well as assessment of individuals for financial aid programs and other necessary benefits needed to assist homeless individuals and/or families with breaking their cycle of homelessness.
 - Completion of all required and/or necessary documentation (including, San Bernardino County's Exhibit E).
 - Transports individuals to various in-house rehabilitation centers and/or housing programs throughout various counties, including, but not limited to, San Bernardino, Riverside, and Los Angeles County.
 - Provides transportation to various appointments and facilities including, but not limited to, Doctors appointments, counseling sessions, Parole and Probation offices, Department of Motor Vehicles, Social Service offices, employment agencies, employment interviews, as well as various courthouses and rehabilitation centers for the purpose of fulfilling mandatory and/or court appointed obligations, and other agencies and organizations providing services that assist individuals with integrating back into society.
2. Explores appropriate housing options based on individual needs and economic status. Said housing includes, but is not limited to, family shelter programs, safe houses, room and board facilities, shared housing, assisted living accommodations, long-term care facilities, skilled nursing facilities, sober living homes, rooms for rent, apartment units, as well as mobile homes and recreational trailers used for temporary and permanent housing.
3. In cooperation with Metro Honda of Montclair temporary housing assistance (i.e. purchasing trailers for homeless individuals), Case Managers are responsible for management and maintenance of trailers, including, but not limited to:
- Conducts monthly interior and exterior inspections and/or evaluations of trailers for damages, defects, and signs of deterioration (including, but not limited to, faulty weather protection, dampness of habitable rooms, electrical hazards, plumbing hazards, inadequate sanitation facilities, hazardous mechanical equipment, inoperable and/or hazardous appliances, non-functioning smoke and/or carbon monoxide detectors) as well as cleanliness and proper care of unit and surrounding premises.
 - Evaluates necessary repairs.

- Obtains bids for required and/or necessary repairs and improvements needed to trailers.
 - Facilitates needed and/or necessary repairs and improvements conducted on trailers.
 - Facilitates all necessary contracts and agreements with occupants placed in trailers.
 - Monitors behavior of occupants, including, but not limited to, enforcement of park regulations and/or house rules.
 - Provides Case Management services to occupants of said trailers in accordance with guidelines noted above.
 - Works closely with Metro Honda staff members to purchase additional trailers and other forms of temporary and transitional housing in accordance with City of Montclair's trailer program with said organization.
 - Conducts all administrative transactions to transfer and/or register new trailers.
 - Searches various locations for proper placement of new trailers.
4. Enters and maintains appropriate and up-to-date information on homeless individuals contacted by the City's Special Operations Unit into San Bernardino County's Homeless Management Information System (HMIS)
 5. Maintain and disperse adequate supplies of food, clothing, and hygiene items (as well as other miscellaneous items) as needed for homeless individuals and/or families participating in programs or settling into various forms of housing.
 6. Provides parenting and life skills classes to homeless individuals and families.
 7. Attends and maintains appropriate and up-to-date training on various programs and resources (including, but not limited to, homeless computer programs and databases necessary to track and assist homeless individuals). Temporary and permanent housing programs, rental assistance programs, financial aid programs, mental health and healthcare programs, legal aid programs, Social Security/SSI benefits, food and clothing programs, utility assistance, as well as qualifying criteria and strategies necessary to assist homeless individuals and/or families with securing and sustaining stable living environments and life styles.
 8. Attends a variety of monthly meetings as well as incidental and/or on-site meetings and interventions as requested by the City's Special Operations Unit. Said meetings and/or interventions include, but are not limited to:
 - West-End Steering Committee (Monthly Meeting)
 - Interagency Council on Homelessness (Monthly Meeting)
 - Homeless Service Providers (Monthly Meeting)
 - West End Behavioral Health (Monthly Meeting)
 - Faith-Based Collaborative (Monthly Meeting), as well as
 - On and off-site meetings and interventions with chronic homeless individuals for purposes of evaluating and/or screening said individuals for appropriate programs.
 - Meetings with family members, friends and social workers of said individual(s)
 - On and Off-Site meetings to assists homeless individuals with required interviews and/or screening criteria necessary to enter various in-house rehabilitation centers and/or housing programs.
 - Meets and collaborates with various agencies and organizations to determine appropriate placement and/or services for said individuals and families.

9. Maintains records of all supporting documents and submits to the City's Special Operations Unit on the first day of each month. Documentation includes but is not limited to:
 - Individuals served
 - Actions taken.
 - Services provided.
 - Receipts for purchases or transportation provided.

EXHIBIT B

The compensation for the services provided by CDC is set at \$5,000 per month not to exceed \$45,000 for the term of the agreement. Compensation is to be provided by funds made available by the “*Homeless Housing Assistance & Prevention Grant*” (HHAP), at \$2,800 per month; and the City of Montclair at \$2,200 per month; in accordance with the payment rates and terms and the schedule of payment as set forth herein.

In the event grant funding for said services is lapsed, reduced, terminated, enhanced, extended, decreased, or diminished, the City shall assume the monthly payment, in part or in full, up to the specified monthly amount, until the conclusion of the agreement timeframe set forth in this Agreement.

Payment Schedule (October 1, 2022 – June 30, 2023)		
<i>Month</i>	<i>HHAP Amount</i>	<i>City Amount</i>
October	\$2,800	\$2,200
November	\$2,800	\$2,200
December	\$2,800	\$2,200
January	\$2,800	\$2,200
February	\$2,800	\$2,200
March	\$2,800	\$2,200
April	\$2,800	\$2,200
May	\$2,800	\$2,200
June	\$2,800	\$2,200
<i>Sub-totals</i>	<i>\$25,200</i>	<i>\$19,800</i>
<i>TOTAL</i>	<i>\$45,000</i>	



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	EDD100/LDU460
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	2	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-83 WITH CRP/VP MONTCLAIR VILLAGE OWNER, LLC., AN OPERATIONS AND MANAGEMENT REGULATORY AGREEMENT REGARDING THE PROPERTY LOCATED AT 5040-5050 ARROW HIGHWAY, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: Through the entitlement process and beginning with the Paseos at Montclair North project completed in 2011, the City Council requires that all multifamily projects in the City of Montclair record a covenant on the property related to management and maintenance.

Agreement No. 22-83, the Operations & Management Regulatory Agreement ("Regulatory Agreement") would become the required covenant for the Village at Montclair project upon recordation.

A copy of the proposed Regulatory Agreement No. 22-83 is attached for City Council review and consideration.

BACKGROUND: During the 1980s and 1990s, the City's Housing Improvement Task Force was charged with improving multifamily housing conditions within the community. A major focus of the Housing Improvement Task Force became the education of property owners regarding the management and maintenance responsibilities of their investment properties. To that end, staff was directed to develop covenants for all new multifamily developments that outline maintenance and managerial responsibilities and to provide the City with a means to enforce such covenants.

The purpose of the Operations and Management Regulatory Agreement ("Regulatory Agreement") is to create a recorded document on the property that outlines the responsibilities of multifamily property owners in the City of Montclair for current and future property owners.

Village at Montclair

The Village at Montclair Project is located within the boundaries of the amended North Montclair Downtown Specific Plan (NMDSP). The proposed development is generally located at 5040-5050 Arrow Highway. The NMDSP was originally adopted by the City Council on May 16, 2006. The amended NMDSP was approved by the City Council on March 20, 2017.

The NMDSP encourages development following urban-style design patterns focused around travel nodes within proximity to commercial shopping opportunities and public transit. The Planning Commission and City Council approved the 6.68 acres project to include approximately 24,919 square feet of ground level commercial lease space and 330 permanent apartment units in an urban-styled mixed-use community. The City Council approved the Village at Montclair project on December 7, 2020.

The project entitlements for the Village at Montclair were subject to compliance with a number of Conditions of Approval adopted by the Planning Commission and City Council. One of the Conditions of Approval included the following requirements:

Owner must consent, in writing, to record a covenant and an Operations & Management Regulatory Agreement – The Village at Montclair (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 and mixed-use project ("the Project") developed in the City for rental/lease 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 and mixed-use project and shall become a Covenant that will run with the land.

The Regulatory Agreement provides terms for compliance with the above-stated Condition of Approval. The more significant points of the Regulatory Agreement include the following conditions:

- The term of the Regulatory Agreement would commence upon recordation and continue in full force and effect in perpetuity until replaced with another regulatory document.
- The developer/property owner would be required to manage the property through a property management company. The property management company retained by property owner would provide an on-site manager subject to the prior written approval of the Police Chief. In exercising approval rights, the Police Chief may require proof of ability and qualifications of the manager and Management Company. Upon 60 days of written notice from the City and showing reasonable cause, the property owner could be required to remove and replace the property manager and the property management company.
- The property management company retained by the property owner would have an employee on staff who is a California Certified Property Manager available to assist with project related management issues.
- Should the calls for police service of a serious nature in the project exceed a level reasonably considered normal and customary for this size of project as determined by the Police Chief for a consecutive two-month period, the property owner would be required to increase the amount and frequency of the courtesy patrols until such time as the Police Chief determines the calls have decreased to a normal service level.
- The property owner would direct the on-site manager to enforce all rules and regulations and apply appropriate tenant screening practices. Draft rules and regulations, a lease agreement, and rental criteria are included as exhibits to the Regulatory Agreement.

- The property owner has prepared a parking management plan. The plan shall require all residents to park in assigned garages or spaces and detail how compliance with on-site parking regulations will be enforced. The property owner or manager may not amend the Parking Management Plan without the approval of the City Council.
- As a part of the rental application, each potential renter of a unit shall be given a written notice detailing the on-site and off-site parking conditions and requirements at the complex. All executed rental lease agreements are required to contain the entire Parking Management Plan as an exhibit including a signed acknowledgment form which records the resident's agreement with the terms of the Parking Management Plan.
- The property owner would agree to keep the property in a well-maintained condition, would operate the property in a businesslike manner, would not commit or permit any waste or deterioration of the property, and would not abandon any portion of the property.
- To secure timely performance of the property owner's obligations in the Agreement, the property owner would create a lien in favor of the City against all portions of the property not dedicated to the City. If the property owner neglects, refuses or fails to fulfill to complete any obligation and the City determines the property owner to be in violation of the Regulatory Agreement, the City shall make a written demand upon the property owner. The property owner has 30 days to begin to remedy default of the Regulatory Agreement. If the work required by the City is not remedied by the property owner within the time frame established by the City, the City may cure the default at the expense of the property owner through a lien.
- The property owner agrees not to sell, transfer, or dispose of any building in the project unless the sale consists of a sale of the entire property to a purchaser or as part of a larger condominium sales effort where individual units are sold to individual purchasers on a building by building or unity by unit basis.
- It is acknowledged that the Regulatory Agreement would be replaced with Conditions, Covenants, and Restrictions in the event the project is converted to condominium ownership.
- The property owner shall supply the City with appropriate indemnification in connection with construction or performance under the terms of the Regulatory Agreement.

FISCAL IMPACT: Approval of Agreement No. 22-83 should have no fiscal impact on the City. The purpose of Agreement No. 22-83 is to attempt a proactive approach to dealing with any future safety or maintenance issues that could arise as a consequence of this project in the future.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22-83, with CRP/VP Montclair Village Owner, LLC., Operations & Management Regulatory Agreement regarding property located at 5040-5050 Arrow Highway.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Montclair/
City Clerk
5111 Benito Street
Montclair, California 91763

Agreement No. 22-83

[Free Recording Request
Government Code, Sec. 6103]

OPERATIONS & MANAGEMENT REGULATORY AGREEMENT

THIS OPERATIONS & MANAGEMENT REGULATORY AGREEMENT ("Regulatory Agreement"), dated as of September 19, 2022 for reference purposes only, is made and entered into by and between the **CITY OF MONTCLAIR**, a California municipal ("City") and, CRP/VP Montclair Village Owner, LLC, a Delaware limited liability company ("Owner"), with reference to the following:

A. Owner has submitted requests for approval of certain land use entitlement applications including a Parcel Map ,a Precise Plan of Design (PPD) and a Parking Management Plan (PMP) ("Project Entitlements") to construct a proposed project with 330 residential apartments and approximately 24,919 square feet of commercial/retail/office/residential ("Flex Unit") space with certain on-site amenities including walkable design features and a 0.31 acre neighborhood park ("Project") on a 6.3 (gross) acres of land generally located on 5040 Arrow Hwy in the City of Montclair ("Subject Site"). The Subject Site is more particularly described in Exhibit "A" attached to this Operations and Maintenance Agreement and incorporated herein by reference.

B. The Subject Site is located within the boundaries of the North Montclair Downtown Specific Plan (NMDSP) that was originally approved by the City Council on May 15, 2006 by Resolution No.06 -2628. The NMDSP was amended by the City Council on March 20, 2017 by Resolution No. 17-3149 and on April 3, 2017 pursuant to Ordinance No 17-965. The Applicant is contemplating the development of this property and would develop the Subject Site in accordance with the provision of the Amended North Montclair Downtown Specific Plan.

C. The Project Entitlements were approved subject to compliance with certain conditions of approval:

Condition No. 18 - Prior to the issuance of any building permit, the Applicant shall record a covenant and 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. The covenant and agreement shall contain affirmative covenants for the maintenance of all such improvements; provisions for the professional management of the project, mechanisms for City enforcement of the covenants and financial security to pay for any remedial actions taken as a result of non-compliance. The covenant and agreement shall be approved by the City Council and may not be cancelled or amended without City approval.

D. The purpose of this Regulatory Agreement is to comply with the requirements of Conditions of Approval found in the Precise Plan of Design.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises, covenants, conditions, and restrictions herein contained, the parties hereto declare, covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. **Singular and Plural Terms.** Any defined term used in the plural in this Regulatory Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class.

1.2. **Accounting Principles.** Any accounting term used and not specifically defined in this Regulatory Agreement shall be construed in conformity with, and all financial data required to be submitted under this Regulatory Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Manager

1.3. **References and Other Terms.** Any reference to any other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections, and Exhibits shall be construed as references to this Regulatory Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation". References herein to statutes, laws, codes, ordinances or regulations by specific number shall mean such statute, law, code, ordinance or regulation as it existed as of the date of this Regulatory Agreement and as it may be amended from time to time thereafter.

1.4. **Exhibits Incorporated.** All attachments and exhibits to this Regulatory Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. TERM

The term of this Regulatory Agreement (“Term”) shall commence on the date it is recorded in the Official Records of the County and shall continue in full force and effect in perpetuity.

3. ON-SITE MANAGEMENT & SECURITY REQUIREMENTS

3.1. **Professional Management Selection**

Owner, through a licensed Property Management Company, shall manage the Project, or cause it to be managed. Any Property Management Company(ies) retained to act as agent for the Owner in meeting the obligation of providing an on-site manager (for residential units) and a property manager (for commercial/retail/office units) shall be subject to prior written approval from the Executive Director Office of Public Safety/Police Chief, which approval shall not be unreasonably withheld or delayed, provided the on-site manager(s) or person(s) assigned from the applicable Property Management Company to manage the Project are appropriately qualified and meet the Property Manager Job Description attached

hereto as Exhibit "B." In addition to the requirement of a professional management of the Project by a Property Management Company, and to the extent that the Project maintains the minimum number of rental units identified in 25 CCR 42, Owner shall assure that an on-site manager and/or maintenance personnel resides on the premises of the Project at all times. The Property Management Company and on-site manager(s) or person(s) assigned shall participate in any active City Crime-Free Housing Program offered by the City.

The Property Manager assigned by the Property Management Company shall be licensed pursuant to California Business and Professions Code, Section 10131 et. Seq., and will have demonstrated experience in leasing, operating, and maintaining a mixed- use development project that contains residential, commercial, retail, and/or office uses. The Owner has not yet selected a Property Management Company. The Property Management Company and on-site resident manager shall be approved by the Executive Director of Public Safety/Police Chief prior to occupancy of any unit.

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 Property Management Company based upon (i) prior experience, (ii) 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 shown, the Executive Director Office of Public Safety/Police Chief may request that Owner replace the Property Management Company. In any agreement with a Property Manager or Property Management Company ("Management Agreement"), the Owner shall expressly reserve the right to terminate such agreement without cause. Notwithstanding City providing Owner with a written request to consider removal of the Property Management Company, City agrees that such request shall be subject to a reasonable opportunity to cure any deficiencies.

Any subsequent changes in the Property Management Company shall be approved pursuant to requirements stated in Section 3.1 above.

3.2. **Management Responsibilities.**

Owner shall assure compliance with the following management responsibilities during the term of this Regulatory Agreement:

- (1) Management Obligations-Residential. The Owner shall maintain the legally required presence of an on-site manager pursuant to California Code of Regulations, Title 25, Section 42. The Property 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 Property Management Company, will ensure that the Project is well maintained pursuant to the standards developed in this Regulatory Agreement and the City of Montclair Municipal Code.
- (2) Registration and Management of Rentals. The Owner, with its Property Management Company, shall develop all rules, documents and procedures to assure all rental/lease occupancies of residential units are professionally managed including but not limited to:
 - Application(s)

- Crime-Free Addendum and other required addenda
 - Tenant screening tools"
- (3) Management Obligations-Commercial/Office. The Owner shall maintain a Property Management Company and a licensed commercial broker for the commercial/retail/office portion of the Project. The Commercial Broker shall ensure that appropriate lease and screening practices are developed and enforced and that rules and regulations pertaining to lease of commercial/retail/office space and the common area are developed, enforced, and managed. The leasing agent shall pursue the lease of Flex Units to commercial/retail/office users providing services or products in conformance with the NMDSP. The Owner, through the Property Management Company, will ensure that the Project is well managed and maintained pursuant to the standards contained in the Regulatory Agreement and in compliance with the Conditions of Approval for the Project.
 - (4) Compliance with North Montclair Downtown Specific Plan for Commercial Units. The Commercial Broker shall be responsible for screening prospective tenant/lessees of commercial/retail/office lease spaces for compliance with Table 5-2 Allowed Land Use and Permit Requirement as contained in the North Montclair Downtown Specific Plan (NMDSP). In addition, the Commercial Broker shall direct all prospective tenants/lessees to obtain approval of a Zoning Use Review Application (ZURA) and a Business License from the City of Montclair.
 - (5) Compliance with Rules. Renters/lessees occupying residential and Flex Units within the Project shall be subject to all rules and regulations developed by the Property Management Company. The Property Management Company shall establish a system for remedying violations and seeking compliance with the rules and regulations. The rules established by the Property Management Company for residential and Flex Units shall include provisions for eviction of renters/lessees for material violations of the rules and regulations of the Project.
 - (6) Maintenance of Interior of Units. The Property Management Company shall develop and implement rules for maintenance and upkeep of the interior of the rental units.
 - (7) Alcoholic Beverages/Controlled Substances. Tenant rules shall prevent the consumption of alcoholic beverages or controlled substances in common areas anywhere in the Project except in those areas allowed by law and expressly designated by Owner/Property Management Company. Areas allowing the consumption of alcoholic beverages or controlled substances, if not subject to a California Alcohol Beverage Control license, shall be subject to the approval of the Executive Director, Office of Public Safety/Police Chief or his/her designee, with consent not to be unreasonably withheld.

3.3. **Security Requirements.** Owner shall provide the following security and security monitoring measures during the term of this Regulatory Agreement:

- (1) Owner agrees to direct the Property Management Company to enforce property rules and regulations as they are periodically updated and published in the lease signed by each tenant/resident. An example of current rules and regulations are attached hereto as Exhibit "C". Owner shall supply the City a copy of all updated rules and regulations upon request.

- (2) Owner shall utilize the California Lease (or rental) Agreement for residential tenancies attached hereto as Exhibit "D", as periodically updated, or modified or similar form. . Owner shall direct the Property Management Company to enforce all of its provisions. Owner shall supply the City a copy of any updated form lease/rental documents and/or community rules and regulations upon request.
- (3) Owner shall direct Property Management Company to investigate each potential resident's suitability, according to all applicable laws, to fulfill all obligations to comply with the rules established for the Project.
- (4) Owner shall direct Commercial Broker to investigate each potential commercial/retail/office users suitability based on established commercial real estate and industry practices and ability to fulfill all obligations to comply with the rules established for the Project. A copy of the commercial/retail/office lease or rental agreement is attached hereto as Exhibit "E". Owner shall supply the City a copy of any updated form lease/rental documents upon request.
- (5) To the extent allowed by law, Owner shall prohibit residential lessee or tenant from subleasing or temporarily renting the leased or rented unit including such temporary rentals as Airbnb or similar rental services. This prohibition against such subleases shall be included in the lease or rental agreement..
- (6) Owner shall provide the following security and security monitoring measures during the term of this Regulatory 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.
 - ii. At any time during the term of the Regulatory Agreement, should the calls for Police service or calls for Police response at the Project exceed a level reasonably considered normal and customary for the size of the Project, 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 at Owner's expense.
 - 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 reasonably 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. The frequency of patrols and Owner's cost for payment of such patrols shall be reasonable in light of the number and nature of calls for Police responses in subsection ii above.

3.4. **Balconies, Patios, and Porches.**

Owner and/or Property Management Company shall provide for and enforce the following outdoor storage regulations during the term of this Regulatory Agreement:

- (1) 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.
- (2) All rental agreements/leases 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.
- (3) The exterior of ground floor level Flex Units that are occupied as housing units must keep the exterior of the unit free of stored items, mismatched planters/pots, makeshift fencing materials, and other items that detract from the appearance of buildings and obstruct any path of travel. All furniture (e.g., seating, tables, etc.) shall be specifically designed and intended for outdoor use in colors and materials coordinated and approved by the Property Management Company.

3.5. 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 applicable law and the following criteria:

- (1) 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.
- (2) Only one (1) antenna per dwelling unit shall be permitted
- (3) The method of attachment and or arrangement of said antenna shall be accomplished in the least visually distracting manner as possible.
- (4) 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.
- (5) No overhead or external wiring of the antennas shall be permitted.

3.6. Parking Management Plan and Parking Management.

Owner has prepared and must implement the mechanics of a Parking Management Plan (PMP) showing all resident, employee, guest parking, and public parking areas pursuant to entitlement approvals of the City attached hereto as Exhibit “F”. The PMP shall require all residents to park in assigned spaces and detail how compliance with on-site parking regulations will be enforced for the Project. All parking spaces shall be identified with a unique number that shall be stenciled on the pavement and regularly maintained. The PMP shall be approved by the City Council prior to its recordation and implementation. The PMP shall not be amended by the Owner without the prior approval of the City Council. The

PMP may periodically be updated at the request of the City. The PMP shall also include the following (subject to applicable law):

- (1) The PMP shall provide 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 Project. "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.
- (2) The PMP shall provide that any parking space provided shall, at all times, be assigned to a units within the Project or guests of tenants in the Project pursuant to the PMP.
- (3) The PMP shall provide that any enclosed garage spaces or covered parking spaces provided shall, at all times, be assigned to a unit 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. No storage shall be permitted within covered parking spaces.
- (4) Any tandem parking spaces identified in the PMP shall be assigned to the same dwelling unit or flex unit. For purposes of the PMP, each tandem space shall count toward fulfillment of the total requirement of parking spaces for the residential portion of the project. Any tandem parking spaces identified in the PMP shall be considered a second parking space assigned to the same dwelling unit or Flex Unit. Tandem spaces shall only be assigned to and utilized for the parking of registered vehicles assigned to the residents of the same unit or occupants of the same Flex Unit. Tandem spaces shall not be assigned and/or rented out to other residents or users.
- (5) The Property Management Company may not introduce, require, stipulate, or incorporate into a 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 NMDSP and the PMP for the project. If parking spaces that exceed the minimum threshold requirement as specified herein are available, the Owner/Property Management Company may apply to the City Council for an amendment to the approved PMP.
- (6) As part of the initial rental/lease application process, each potential renter/lessee of a unit within the Project shall be given written notice of the PMPs on-site parking and off-site parking conditions and requirements. All executed rental lease agreements will contain a detailed summary of the PMP as an exhibit including a signed acknowledgement form which records the resident's agreement with the terms of the PMP. An example of such notice with a tenant acknowledgement is attached as Exhibit "G". 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 property manager and available online on the Project's website for residents/tenants to view.

4. MAINTENANCE, OPERATION, PRESERVATION AND REPAIR OF PROPERTY

4.1. Operation of Commercial/Retail/Office/Residential Flex Units Required.

Owner shall make approximately 24,919 square feet of ground floor space available for commercial/retail/office/residential use. To assist the Owner/Property Management Company and Commercial Broker in achieving full occupancy of the Project with commercial and residential uses per approved plans, the following sequential leasing strategy may be employed as a means to create intact commercial areas for the project:

- (1) The total floor area of Flex (interim residential use of commercial retail spaces) and Commercial Units (perpetual use of spaces as commercial retail, restaurant, office uses pursuant to the provisions of the North Montclair Downtown Specific Plan) as approved for the project shall be a minimum of approximately 24,919 square feet, and shall be inclusive of locations depicted on the "Ground Floor Leasing Plan," attached hereto as Exhibit "H".
- (2) Units designated as Commercial shall be reserved for commercial use in perpetuity after each Commercial unit receives its Certificate of Occupancy.
- (3) The use of Flex Units for residential occupancy shall be considered an interim use as part of an overall strategy to achieve full occupancy of designated Flex Unit ground floor areas as permanent commercial uses to support the approved mixed-use development. After a Flex Unit has been converted to a commercial use, it shall be deemed a permanent commercial use and not be reestablished as a residential use, and the Flex Unit designation shall no-longer apply.
- (4) Owner shall limit residential tenant use of any Flex Units to short-term (12 month) lease agreements to allow for conversion of Flex Units to commercial/restaurant uses.
- (5) Until full occupancy is achieved, the Owner/Property Management Company shall provide the City with an annual vacancy-occupancy progress report for each building. After achieving full occupancy of residential units and commercial space, the Owner/Property Management Company and the City may mutually determine an annual vacancy-occupancy report is no longer necessary
- (6) To assist the Owner/Property Management Company in achieving full occupancy of the Project with commercial and residential uses per approved plans, the following sequential leasing strategy may be employed as a means to create intact commercial areas for the project:

- i. Gateway Focus Area (Intersection of Arrow Highway at Fremont Avenue at Buildings 1 and 2).

Total Number of Units: 17

Commercial Unit No.: 1-110, 1-112, 1-116, 1-118, 2-102, 2-103, 2-104, 2-105 (8 Units)

Flex Unit No: 1-102, 1-104, 1-106, 1-108, 1-120, 1-121, 2-101, 2-113, 2-114 (9 Units)

Total Floor Area: 17,150 s.f.

- ii. Station Promenade Focus Area (Plaza Area leading to Montclair Transcenter at Building 4).

Total Number of Units: 13

Commercial Unit No.: 4-135, 4-136 (2 Units)

Flex Unit Nos: 4-101, 4-102, 4-103, 4-104, 4-106, 4-107, 4-108, 4-109, 4-110, 4-137, 4-139 (11 Units)

- iii. Total Floor Area: 7,769 s.f.

- (7) Flex Units in Buildings 1, 2 and 4 (identified in Gateway Focus Area under subsection "6" of section 4.1) may, upon application to the City, be converted to, and leased as a temporary residential use, as provided in this Section, for a period of not more than 12 months following the date the lease was entered into for each applicable unit, after such time shall be converted to a commercial use, except as follows:

- i. At the end of the initial 12-month lease period, the Owner/Property Management Company, upon application to the City, may request an extension to use a Flex Unit for residential use for additional 12-month periods and the City shall not unreasonably withhold its consent based on lack of interest from nonresidential tenants; and
- ii. Prior to an approval of any additional 12-month extension request, the application for such an extension shall be accompanied by an independent Retail Market Analysis per subsection "8" of section 4. Completed within the most recent six months preceding application for retention as a residential unit; and
- iii. After the initial 24-month (two 12-month leases) period established for Flex Units in subsection "I" of this section the Owner/Property Management Company may submit a formal application for each additional 12-month extension for each designated Flex Unit within the project for which the extension is requested. Such applications along with supporting documentation regarding marketing and leasing activity as identified in subsection "8" of section 4.1, shall be submitted to the Community Development Director for consideration. The decision of the Director may be appealed to the City Manager.

- (8) A Retail Market Analyses shall be prepared by an independent third party consultant jointly approved by the Owner/Property Management Company and the City, and be prepared at the Owner's/Property Management Company's expense. Such reports shall be conducted within the twelve months preceding any additional extension request for the temporary use of a Flex Unit(s) as a residential or live-work use and every 12 months thereafter; provided, however, the Community Development Director shall have final say in determining that the data in the most recent market analysis correctly represents the then current state of the area's commercial market. If the Community Development Director determines the data presented in the market analysis is no

longer valid, relevant, or properly represents the area's commercial market, the Community Development Director shall require that a new market analysis be conducted and submitted along with any extension request for the temporary use of a Flex Unit(s) as a temporary residential or live-work use.

- i. Retail Market Analysis defined. A Retail Market Analysis is a tool for identifying retail market trends within or around a local community. While the analysis focuses specifically on the performance of local retail markets, information on the broader economic trends within the region is critical to understanding current and future changes in the retail markets subject to the analysis.
- ii. The Retail Market Analysis shall analyze and demonstrate the need for additional extensions request based on local retail market trends; consumer demand; vacancy rates; commercial versus residential lease rates; unit conversion costs from commercial/restaurant/office to residential or live-work; unit conversion costs from residential or live-work to commercial/restaurant/office; changes in demographics and population; the age and income distributions of the population; and other relevant data for uses associated with mixed-use and transit-oriented developments that affect the demand for retail/office goods and trends.

(9) Owner agrees that upon the sale, transfer, or other disposition of the Property that the Flex Unit language and sequential leasing strategy provided for in subsection 4.1 of this Regulatory Agreement shall not carry over to future Owners.

4.2. **Maintenance; Periodic Improvements Required.** Owner, through its Property Management Company, shall keep the Project well-maintained (including, without limitation, private streets and drives, 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 or create a nuisance. Such maintenance shall include, without limitation, the following:

- (1) Keeping the exterior surfaces of buildings painted, plastered or otherwise appropriately treated to be in sound condition;
- (2) Replacing broken or severely etched windows and other glass surfaces promptly;
- (3) Keeping the property free from any accumulation of debris, graffiti, and waste materials (including pet waste);
- (4) Keeping trees, lawns, shrubs and other plant materials trimmed and in healthy condition, and replacing missing or dead plant materials;
- (5) 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

- (6) Remove graffiti on any building or associated improvement, and /or within 48 hours after its appearance. If the paint color does not match an existing wall surface for any reason, the entire wall must be painted;
- (7) Keeping paved surfaces and other hardscaping elements clean and in good condition, free of dirt and grime, gum, or grease, potholes, excessive staining or unsightly accumulation of leaded motor oil/automotive fluids, significant surface cracks, dangerous uplifted walkways, or other conditions which impede paths of travel;
- (8) No outdoor pay telephone or vending machine (including delivery lockers) shall be installed on any public street, easement, or par. Vending machines may be allowed within building 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 satisfaction of the Community Development Director;
- (9) Prohibiting auto repairs, car washing, storage of unregisters and/or inoperable vehicles, within parking areas of the Project;
- (10) 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; ;
- (11) Keeping all private streets, drive aisles, and exterior parking area within the Project free of weeds, debris, trash, graffiti, and potholes. Owner shall be responsible for maintenance and repaving of all private streets and drive aisle surfaces;
- (12) Prohibiting the use of shopping carts for any commercial/office user within the Project boundaries;
- (13) Maintain each dog park area in a clean orderly condition at all times to deter odors and maintain sanitary conditions. To assure compliance, each dog park area shall comply with the following minimum standards:
 - i. Dog park areas shall be maintained at all times, with any holes filled in, substrate properly maintained, and amenities kept in good condition and functional.
 - ii. Each dog park area shall be posted with rules for the dog park area in English and Spanish, in type large enough to be easily read by those entering the park.
 - iii. Provide adequate disposable bags, or other means of removing feces, and refuse cans for disposal. Trash cans shall be regularly emptied with contents disposed in a proper manner.
- (14) Keeping 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;

- (15) Implementing and keeping a waste and refuse collection system in good operating order at all time. The Property 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). A copy of the Master Refuse Removal Plan is attached hereto as Exhibit "I". Each tenant must be informed of the waste and refuse collection system prior to executing a rental or lease agreement. An example of such notice with tenant acknowledgment is attached hereto as Exhibit "I". The Owner/Property Management Company may not charge an additional fee related to the type of collection method of waste and refuse.
- (16) All refuse collection system or areas (e.g. trash chutes, rooms or enclosures) shall be power washed a minimum of two (2) times per month (or more frequently as needed), by the Property Management Company 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. All 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.

4.3. **Restrictions on Alterations and Repairs.**

Owner shall not remove, demolish or alter any Improvement, expect to make non- structural and any required structural repairs which preserve or increase the property's value, sand shall promptly restore, in a good and workmanlike manner, and Improvement (or other aspect or portion of the property) that is damage or destroyed from any cause.

4.4. **Periodic Improvements Required.**

Notwithstanding the obligations of subsection 4.1 and 4.2 above, Owner shall undertake the periodic improvements described in the attached Exhibit "J" within the timeframe reflected in Exhibit "J" (Periodic Improvements).

5. SECURITY FOR OBLIGATIONS & REMEDIAL ACTIONS.

5.1. **Lien.** To secure the timely performance of Owner’s obligations under Sections 4.1 and 4.2 above and this Section 5.1, Owner hereby creates in favor of City a lien against all portions of the property not dedicated to City or some other governmental agency for a public purpose (the “Lien”). If Owner neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of Section 4.1 or 4.2 above, or if City determines there is a violation by Owner of any federal, state, or local law, ordinance, regulation, related to the Project, City may at any time thereafter declare such violations to be a public nuisance and Owner to be in default or violation of this Regulatory Agreement and make written demand upon Owner to immediately remedy the default or violation (“Notice”). Owner shall substantially commence the work required to remedy the default or violation within thirty (30) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, City may provide the Notice verbally, and Owner shall substantially commence the required work within twenty-four (24) hours thereof.

5.2. **Failure to Remedy: City Action.** If the work required to remedy the noticed default or violation set forth in Section 5.1 above is not diligently prosecuted to a completion reasonably acceptable to City within the time frame contained in the Notice, then City may, after prior written notice to Owner providing Owner an opportunity to cure, complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its reasonable discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole expense of Owner and shall be secured by such lien. In the event City elects to complete or arrange for completion of the work required pursuant to this Section then, after reasonable written notice providing Owner an opportunity to cure, City may require all work by Owner or its contractors to cease in order to allow adequate coordination by City. City may recover its costs for enforcement and abatement of nuisance pursuant to California Government Code, Section 54988.

5.3. **Compliance.** Owner shall comply with all laws and requirements of governmental agencies (including, without limitation, all requirements relating to the obtaining of governmental agency approvals) and all governmental agency approvals relating to Owner, the property or Owner's business thereon.

5.4. **The Lien.** The Lien shall be authorized pursuant to California Government Code, Section 54988 and shall be subordinate to any and all secured financing that Owner may obtain from time to time with respect to the property, without the need for further documentation. If, however, a lender should request additional subordination documentation, Owner shall provide City with requests to subordinate in writing.

6. OTHER AFFIRMATIVE COVENANTS

6.1. **Affirmative Covenants.** Throughout the Term, Owner covenants and agrees:

(1) **Pay Claims and Indebtedness.** Subject to all rights of offset, setoff, contest and defenses that Owner may have, promptly to pay (i) such amounts, chargeable against Owner or the property, as City reasonably deems necessary to protect and preserve the property and this Regulatory Agreement, and (ii) all encumbrances, charges, and liens on the property, with any interest on them, which, in the judgment of the City Manager are, or appear to be, prior or superior to this Regulatory Agreement.

(2) **Notice of Certain Matters.** To give notice to City, within thirty (30) days of Owner's learning thereof, of each of the following:

- i. Any dispute between Owner and any governmental agency (other than City) relating to the property, the adverse determination of which might materially, adversely affect the property; and
- ii. Any change in Owner's principal place of business.

7. SALE OR TRANSFER OF PROPERTY

7.1. **Property Sales Restrictions.** Owner covenants and agrees not to sell, transfer or otherwise dispose of any building within the property, or any portion of a building unless such sale is either: a) a sale of the entire property to a purchaser, or b) as part of a larger condominium sales effort where individual units are sold to individual purchasers, on a building by building or unit by unit basis, consistent with the rules and regulations of the California Department of Real Estate. This section shall not be deemed, construed or interpreted to prohibit any transfer of the property to any lender, or its designees, under a

financing secured by the property with or without City's consent. In addition, it acknowledged that this Regulatory Agreement may, at some point in the future, be replaced with amended Conditions, Covenants & Restrictions to be administered by a homeowners' association formed upon the conversion of the Project to condominium ownership. Nothing contained herein shall prohibit the removal of all or a portion of the covenants contained herein upon formation of homeowners' association for a condominium project in compliance with the approved conditions of approval for the Project, including, but not limited to, requiring the formation of a homeowner's association prior to the conversion or sale of any unit as a condominium. Owner shall not be responsible or liable for the acts, actions or omissions of any such homeowner's association.

7.2. **Transfers in Violation.** The property and any interest in title to it shall not be transferred or conveyed to any person or entity except as provided in this Regulatory Agreement. Any such conveyance or other transfer in violation of the terms of this Regulatory Agreement shall be voidable at the election of City.

8. INDEMNIFICATION.

8.1. **Indemnification.** Owner shall defend, indemnify and hold the City, its officials, officers, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or negligent or willful misconduct of Owner, its officers, employees, and agents, arising out of or in connection with the performance or construction of the Project or this Regulatory Agreement, including without limitation the payment of all consequential damages, attorney's fees and other related costs and expenses. Owner shall defend, at Owner's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City its officials, officers, employees, and agents. Owner shall pay and satisfy any judgment, award or decree that may be rendered against City its officials, officers and employees, and agents officials, officers or employees, in any such suit, action or other legal proceeding. Owner shall reimburse City and its officials, officers and employees, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Owner's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City officials, officers, employees, agents or volunteers.

9. NONDISCRIMINATION

9.1. **Nondiscrimination.** Owner covenants and agrees that there shall be no discrimination against or segregation of any person or group of persons on account of any protected class under California or Federal law including but not limited to: race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property, or any part thereof, nor shall Owner 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, sub lessees, or vendors of the property.

10. PERIODIC REVIEW

10.1. **Periodic Review.** Under direction of the City Manager, the City shall review this Regulatory Agreement annually, on or before the anniversary of the Effective Date, in order

to ascertain the good faith compliance by Owner with the terms of the Regulatory Agreement. Owner shall submit an Annual Monitoring Report, in a form acceptable to the City, within 30 days after written notice from the Director.

10.2. **Special Review.** The City Council may order a special review of compliance with this Regulatory Agreement at any time.

11. DEFAULTS

The occurrence of any of the following, whatever the reason therefor, shall constitute an "Event of Default" by Owner:

- (1) Owner fails to perform any obligation under this Regulatory Agreement, and such failure is not cured within thirty (30) days after Owner's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30)-day period, such failure shall not be an Event of Default so long as Owner (in any event, within thirty (30) days after receipt of such notice) commences cure, and thereafter diligently prosecutes such cure to completion; or.
- (2) Owner is enjoined or otherwise prohibited by any governmental agency (other than City) from occupying all or any of the property and such injunction or prohibition continues unstayed for ninety (90) days or more for any reason; unless Owner is diligently attempting to have such injunction or prohibition stayed or lifted and Owner demonstrates, to the reasonable satisfaction of the City Manager, a reasonable likelihood that such stay or lifting will occur within a reasonable time.

12. REMEDIES

12.1. Remedies in General.

It is acknowledged by the parties that City would not have entered into this Regulatory Agreement if it were to be liable in damages under this Regulatory Agreement, or with respect to this Regulatory Agreement or the application thereof.

In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Regulatory Agreement, except that City shall not be liable in damages to Owner, or to any successor in interest of Owner, or to any other person, and Owner covenants not to sue for damages or claim any damages:

- (1) For any breach of this Regulatory Agreement or for any cause of action which arises out of this Regulatory Agreement; or
- (2) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Regulatory Agreement; or
- (3) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Regulatory Agreement.

It is understood and agreed that Owner, at the time of approval of the Project, indicated their voluntary agreement to accept the conditions of approval for the Project, including this Regulatory Agreement.

12.2. **Cumulative Remedies: No Waiver.** City's rights and remedies under this Regulatory Agreement are cumulative and in addition to all rights and remedies provided by law. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Regulatory Agreement shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Owner requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations. City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation. City shall have the right to pursue damages for Owner's defaults but in no event shall Owner be entitled to damages of any kind from City, including, but not limited to, damages for economic loss, lost profits, or any other economic or consequential damages of any kind or nature.

13. COVENANTS TO RUN WITH THE LAND

Owner hereby subjects the property to the covenants, reservations and restrictions set forth in this Regulatory Agreement. City hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors in interest to all or any part of the property; provided, however, that on the termination of this Regulatory Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any part of the property, or any interest therein, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

14. BURDEN AND BENEFIT

City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the property by the tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which this Regulatory Agreement was made. Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which this Regulatory Agreement was made.

15. UNIFORMITY; COMMON PLAN

The covenants, reservations and restrictions hereof shall apply uniformly to the property in order to establish and carry out a common plan for the use, development and improvement of the property.

16. MISCELLANEOUS

16.1. **Governing Law.** This Regulatory Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

16.2. **Amendments.** This Regulatory Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the Official Records.

16.3. **Notice.** All notices, certificates or communications shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been personally delivered or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Owner: CRP/VP Montclair Village Owner, LLC.,
4340 Von Karman Avenue, Suite 110
Newport Beach, CA 92660

With a copy to:

If to City: Mikey Fuentes, Director of Economic Development
5111 Benito Street, P.O. Box 2308
Montclair, CA 91763
Attention: City Manager

With a copy to: City of Montclair
5111 Benito Street, P.O. Box 2308
Montclair, CA 91763
Attention: City Attorney

Any of the foregoing persons may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

16.4. **Severability.** If any provision of this Regulatory Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

16.5. **Multiple Counterparts.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

16.6. **Construction of Titles.** The captions, headings and titles of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

16.7. **No Partnership with City.** Owner is, and shall be deemed to be, an independent

contractor and is not an employee of City and shall not become an agent of City.

16.8. **Attorney's Fees.** In case any action at law or in equity, including an action for declaratory relief, is brought against Owner to enforce the provisions of this Regulatory Agreement, the losing party agrees to pay reasonable attorney's fees and other reasonable expenses incurred by the prevailing party.

16.9. **Successors and Assigns.** The terms and provisions of this Regulatory Agreement bind and benefit the heirs, legal representatives, successors and assigns of the parties.

16.10. **Exhibits.** Each of the Exhibits attached hereto is hereby incorporated herein by this reference.

17. Mortgage Protection

The terms of this Article 17 are for benefit of any mortgagee of the Owner providing construction financing for the Project (a "Mortgagee) and may be relied upon and shall be enforceable by the Mortgagee as if the Mortgagee were a party to this Regulatory Agreement. If the City receives notice from a Mortgagee requesting a copy of any future notice of default that may be given to Owner, and specifying the address for service thereof, then the City shall deliver to Mortgagee, concurrently with service thereon to Owner (the "Notice of Default"). No Notice of Default shall be deemed to have been duly given to the Owner unless and until a copy thereof shall have been so given to Mortgagee. Mortgagee shall have the right (but not the obligation) to cure or remedy, or to commence to cure or remedy, the default claimed within the applicable time periods for cure specified in this Regulatory Agreement, plus an additional thirty (30) days. If, such however, the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession of the Project, such Mortgagee shall seek to obtain possession with diligence and continuity through a receiver or otherwise, and shall thereafter remedy or cure such default or noncompliance promptly and with diligence after obtaining possession. So long as Mortgagee is pursuing cure of the default, the City shall not exercise any right or remedy under this Regulatory Agreement on account of default. The City shall accept performance by Mortgagee of any covenant, condition, or agreement on the part of the Owner to be performed hereunder with the same force and effect as though performed by the Owner.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, City and Owner have executed this Regulatory Agreement by duly authorized representatives, all on the date first written hereinabove.

“OWNER”

CRP/VP Montclair Village, LLC
A Delaware limited liability company

By: _____
Name: _____
Its: _____
Date: _____

“CITY”

CITY OF MONTCLAIR,
a California municipal corporation

By: _____
Name: Javier “John” Dutrey
Its: Mayor
Date: _____

ATTEST:

By: _____
Name: Andrea Myrick
Its: City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
Name: Diane Robbins
Its: City Attorney
Date: _____

Index of Exhibits to Agreement No. 22-83

Note: Exhibits are provided as an external attachment to the Agenda Packet.

Exhibit "A"
Legal Description

Exhibit "B"
Property Manager Job Description

Exhibit "C"
Rules and Regulations

Exhibit "D"
Residential Lease/Rental Agreement

Exhibit "E"
Commercial Lease/Rental Agreement

Exhibit "F"
Parking Management Plan

Exhibit "G"
Tenant Acknowledgement of Parking Management Plan

Exhibit "H"
Flex Use Ground Floor Leasing Plan

Exhibit "I"
Master Refuse Removal Plan

Exhibit "J"
Waste and Refuse Acknowledgement

Exhibit "K"
Periodic Improvement



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	CCK285
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	3	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-93 WITH RECORDS CONTROL SERVICES, INC. FOR RECORDS MANAGEMENT CONSULTING SERVICES (INVENTORY ASSESSMENT, UPDATED RETENTION POLICY, AND STRATEGIC ROADMAP)		

REASON FOR CONSIDERATION: Montclair’s Citywide Records Management Program is outdated and in dire need of a complete overhaul. Departments currently manage their own records internally in several fragmented ways across different systems—both electronic and in paper—which makes it difficult for other departments and newer staff who lack the institutional knowledge to research and find documents and information.

In today’s litigious society, Records Management is more important than ever, but unfortunately is still overlooked and underfunded at all levels of government. A sound records management program saves money for an organization overall by improving customer service, increasing staff efficiency, allocating scarce resources, and providing a legal foundation for how an agency conducts its daily mission.

Without a system that is organized, efficient, easy to use, and that takes all types of records into account, the City’s costs will continue to increase due to staff time that is wasted searching for information and responding to Public Records Act requests and subpoenas for records.

The City Council is requested to consider approval of Agreement No. 22-93 with Records Control Services, Inc. (RCS) for records management consulting services, including inventory assessment, updated retention policy, and development of a strategic records management roadmap.

BACKGROUND: The City’s current Records Management Program consists of a Citywide Filing System created in the 1980s; a Records Retention Schedule initially adopted in 2012; and an off-site records storage program. The Records Management Program is lacking in many areas that make it difficult for staff to locate records, destroy records that are past retention in a timely fashion, and research information.

Citywide Filing System

The City Clerk’s Office implemented the Citywide Filing System in the late 1980s loosely based on a popular filing system called the Municipal Unified Functional Filing System (MUFFS) in which physical file folders were made for each topic. The City Clerk’s Office oversaw and ensured the system’s continued and consistent use by staff. Departments were expected to maintain all paper records internally using the File ID numbers from the Citywide Filing System. Unfortunately, the system was not adaptable to the modernization of business operations and recordkeeping practices and, with the City’s adoption of computer technology, database systems, and electronic records that cannot or should not be printed through the 1990s, the paper filing system fell out of consistent use for most departments by the early 2000s.

Records Retention Schedule

In 1999, in order to alleviate a lack of consistent standards across public agencies, the California Legislature added Section 12236 to the Government Code, which provided the Secretary of State direction to establish the Local Governments Records Program. As part of the program, the Secretary of State prepared, in conjunction with the State Archives Division and the City Clerk's Association of California, the "Local Government Records Management Guidelines," which delineate the retention periods for many types of records kept by public agencies. The Secretary of State released the *Local Government Records Management Guidelines (2006)*, which served as a basis for many agencies' initial records retention schedules including the City of Montclair's, which was adopted in 2012.

A records retention schedule is a systematic plan establishing how long information must be kept for legal and operational requirements and the guideline for how to dispose of it. Municipalities implement records retention schedules to maintain regulatory compliance, as well as to ensure disposal methods are legally defensible. In essence, a retention schedule is the foundation of a solid records information management program that governs records throughout their lifecycle.

A records retention policy clarifies a public agency's legal authority to manage records and documents entrusted to the agency's care. Effective records management is cost-effective, improves efficiency, and reduces an agency's potential liability regarding destruction of records. Adherence to a records retention and destruction schedule is one of the necessary components of an effective, reliable, and functional Records Management Program.

Over the past decade, staff have found the City's retention schedule to be difficult to use, missing record types that should be included and including records that are not descriptive of our own, and incompatible with the way their department's records are stored or filed, making it difficult to perform records destruction on schedule. The City Clerk has found this to be a common experience among other municipal agencies that used the Secretary of State's retention guidelines as a basis for their retention schedules.

Records experts are now recommending as a best practice that retention schedules and records management programs be structured to complement one another and make it easier to find records and information when requested by outside parties, when needed for staff research, or when due for destruction. The process of analyzing and updating the City's Records Management Program will also enable the City to adopt best practices for all types of records across various storage platforms and methods for efficiently organizing and retrieving those records.

Request for Proposals

On May 18, 2022, staff provided a Request for Proposals (RFP) for Records Management Consulting Services (Inventory Assessment, Updated Records Retention Policy and Strategic Roadmap) to five highly reputable firms that specialize in Records Management and have worked with cities throughout California on similar projects. By the June 30, 2022 deadline, proposals were received from two consultants, Records Control Services, Inc. (RCS), and Western Integrated Systems (WIS). After a committee of staff members reviewed and rated the proposals from both firms based on qualifications, references, work plan, and fees, the proposal from RCS was found to be superior and is the firm staff recommends moving forward with.

Records Control Services, Inc.

Incorporated in 1979, Records Control Services, Inc. is a privately held California small business firm of information resource management specialists offering development and implementation of partial or full-scale records and information management (RIM) programs in government and private industries.

The Principal Consultants of RCS are Certified Records Managers, receiving certification from the Institute of Certified Records Managers and also serve as Chapter Board Members for the Association of Records Managers and Administrators, International (ARMA). Bruce G. Meier, the consultant that would be assigned to lead this project, provides educational workshops and seminars to state, local and regional government entities and private industry professional associations and organizations.

RCS has performed, or is in the process of performing, similar records management update projects for the Cities of Irwindale, Pinole, Vallejo, Emeryville, Napa, and San Rafael. All agency references staff spoke with provided extremely positive feedback about the process of working with Mr. Meier, customization of the programs to their agencies' needs and preferences, and satisfaction with the results.

The proposal submitted by RCS consists of three phases that will involve staff from all City departments. The proposal is summarized as follows:

- *Phase 1 - Discovery, Assessment, Gap Analysis, and Records Classification System (estimated time 16 to 18 weeks)*

In the first phase, the consultant will review the City's current policies and develop a project timeline. There will be a kick-off meeting with key City staff (the project team), and then RCS will separately hold meetings with representatives from each department who are familiar with the department's records to review and inspect active and inactive files including paper, electronic, and microfilm; perform on-site reviews of currently available storage space and equipment; and determine adherence to current records retention schedules and records management policies. From these meetings and reviews, RCS will assess the most appropriate methods and procedures for each department and record type. RCS will then prepare a report summarizing the result of the review of the City's records and provide a presentation of findings and gap analysis to the project team.

- *Phase 2 - Records Information and Management Policies/Procedures & Retention Schedule (estimated time 8 to 10 weeks)*

During Phase 2, RCS will develop a comprehensive proposal for a Records Management Program customized to the City's records and staff preferences to maximize use of the City's available on-site storage space, including an updated Records Retention Schedule, policies and procedures for records and information management based on best practices, and recommendations for physical and digital records storage and a centralized, all-inclusive system for quickly navigating and locating records.

- *Phase 3 – Records Management Program Implementation Strategy & Training (estimated time 7 to 9 weeks)*

In the final phase, RCS will develop and provide training and procedure guides to staff for Records Management Program maintenance and preservation—including guidance for the City Council’s future adoption of a policy that complies with the state’s Trustworthy Electronic Document requirements to convert paper records to electronic format, disposing of the paper versions permanently, and designating the electronic copy as the new original record, which will be essential for “going paperless” with any forms or documents that originated on paper.

FISCAL IMPACT: Funding in the amount of \$50,000 is included in the City’s Fiscal Year 2022–23 Budget in the City Clerk program for an electronic records management system consultant. The total contract amount is \$48,945; however, due to the extensive review and analysis process and multiple meetings required with various departments during each phase, the project timeline is anticipated to exceed one year. It is therefore likely that not all of the budgeted funds will be expended before the end of the current fiscal year and will carry over to Fiscal Year 2023–24. The contract term would end June 30, 2024.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22–93 with Records Control Services, Inc. for records management consulting services (inventory assessment, updated retention policy, and strategic roadmap).

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

RECORDS MANAGEMENT CONSULTING SERVICES

THIS AGREEMENT is made and effective as of on September 19, 2022, between the City of Montclair, a municipal corporation ("City") and Records Control Services, 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 September 19, 2022, and shall remain and continue in effect for a period of 22 months until tasks described herein are completed, but in no event later than June 30, 2024, 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, and competently 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. Consultant shall have the duty to prepare any design documents free from defects.

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 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 \$48,945.00 for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

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

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

(d) Consultant agrees that, in no event shall City be required to pay to Consultant any sum in excess of ninety-five percent (95%) of the maximum payable hereunder prior to receipt by City of all final documents, together with all supplemental technical documents, as described herein acceptable in form and content to City. Final payments shall be made no later than sixty (60) days after presentation of final documents and acceptance thereof by City.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least thirty (30) 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 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 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, 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. Any reuse or modification of the work product without the prior written consent of Consultant will be at the sole risk of the City. 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, subconsultants, 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 contractors, subcontractors, subconsultants, 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 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.

(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, Subconsultant, or other person or entity involved by, for, with, or on behalf of Consultant in the performance of any aspect of this Agreement. In the event Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible for each and every Subcontractor, Subconsultant or other person or entity in terms of defense, indemnity and hold harmless obligations in favor of the Indemnified Parties as set forth above. This obligation to indemnify and defend the Indemnified Parties is binding on the successors, assigns, or heirs of Consultant and shall survive the full performance or termination of this Agreement. These indemnification provisions are independent of and

shall not in any way be limited or superseded by the insurance requirements and insurance-related provisions of this Agreement.

(d) City Lost or Damaged Property – Theft. Consultant further agrees to pay or cause to be paid to the Indemnified Parties' benefit, any and all damages, fines, penalties, 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, subcontractors or affiliated or related entities and/or its or their employees, agents and representatives, whether such actions, omissions to act, negligence or intentional conduct is or was authorized by this Agreement or not. City assumes no responsibility whatsoever for any property placed on the premises of City. Consultant further agrees to waive all rights of subrogation against the Indemnified Parties.

(e) Non-Waiver and Non-Exhaustion of City's Further Rights and Remedies. No aspect of this provision shall in any way limit or effect the rights of the Indemnified Parties against the Consultant under the terms of this Agreement or otherwise. The indemnification provisions shall apply regardless of whether this Agreement is executed after Consultant begins the 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 “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 \$500,000 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 \$1,000,000 each claim. Covered professional services shall specifically include all work to be performed under the Agreement and delete any exclusion that may potentially affect the work to be performed.

(b) Endorsements

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

- (1) Commercial General Liability

Additional Insured: The City, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional

insureds with regard to liability and defense of suits or claims arising out of the work or operations performed by or on behalf of the 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.

(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.

(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 not be liable for

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

12. LEGAL RESPONSIBILITIES

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

13. UNDUE INFLUENCE

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

14. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

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

15. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

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

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, requests for admissions, or other discovery request, court order, or subpoena from any person or

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

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

16. NOTICES

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

To City:	Andrea Myrick, City Clerk City of Montclair 5111 Benito Street Montclair, CA 91763 cityclerk@cityofmontclair.org
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To Consultant: Bruce G. Meier, President/CEO
Records Control Services, Inc.
15 Cornwall Court
Oakland, CA 94611
Bruce@RecordsControlServices.com

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 REQUEST FOR PROPOSALS

Consultant is bound by the contents of City's Request for Proposal, Exhibit "C" hereto and incorporated herein by this reference. 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.

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: _____
Bruce G. Meier, CRM
President/CEO, Records Control
Services

Attest:

By: _____
Andrea M. Myrick
City Clerk

Approved as to Form:

By: _____
Diane E. Robbins
City Attorney

EXHIBIT A

Records Control Services, Inc.

Work Plan & Proposal

Introduction

This report contains recommendations and proposals for a records improvement program, allowing the City to refine best records management and information governance practices. Detailed tasks are included in the proposal that follows this section.

Purpose

The purpose of this proposal is to provide the City with an analysis and report of current records management practices, designing and researching Records Retention Schedules for managing physical and electronic documents, policies and procedures for program management, and recommendations for an information governance roadmap to allow highly efficient information management and disposal with the City.

Project Scope

The program provides records retention suggestions for identified records managed and stored within the City's target departments:

- Administration
 - Administrative Services
 - City Attorney
 - City Council
 - City Clerk
 - City Manager
 - Human Resources
- Economic Development & Housing
- Human Services
- Finance
- Information Technology
- Community Development
 - Planning
 - Building
 - Code Enforcement
 - Fire Prevention Bureau
- Police & Fire
- Public Works

General Recommendations

The goal of a comprehensive records management program is to control the creation, acquisition, processing, maintenance, storage and final disposition of all recorded information, regardless of form or media, handled during normal business practices.

Implementation of such a program would result in significant savings for the City through:

- Safe, highly efficient storage and retention of all records in accordance with Federal, State and Local regulations.
- Rapid access to all active, semi-active and inactive records stored in offices or off-site facilities.
- Immediate reduction of misfiled and lost information.
- Cost effective use of prime office and storage space.
- Timely disposal of obsolete records through approved retention schedules.
- Protection of vital records from natural or man-made disasters.

RCS recommends a comprehensive Records Management Policy be adopted by the City Council, including a records retention component, to form the foundation of a legally acceptable Records and Information Management Program (RIM) in compliance with GARP® guidelines. A full RIM program should be implemented in several segments, including:

1. Inactive records storage system.
2. Active files management with a uniform filing system.
3. Records retention management with approved retention periods and schedules.
4. Information governance evaluation and needs assessment plan.
5. Electronic document management and tracking systems.
6. A Vital Records Protection and Disaster Recovery Program.

EXHIBIT A

Records Control Services, Inc.

This proposal addresses the policy development, records retention management components and information governance evaluation for a comprehensive RIM Program. Detailed proposals for other segments can be submitted by RCS upon request of the City.

Approach

This proposal is separated into phases. Phases 1 and 2 can be implemented concurrently after the interview process is completed and the uniform classification index is created. Phase 3 must be implemented in sequence.

Work will be completed both at the City's facilities and RCS's Oakland offices. RCS's principal consultant will visit City facilities for initial interviews and records evaluation, and reviewing the retention schedule structure, retention periods and policy suggestions, as needed.

Proposal for Records Management Consulting Services

This proposal presents the City of Montclair (City) with project tasks and time estimates for evaluating and assessing current records management practices throughout the City, creation of a uniform record series classification index, designing and researching records retention schedules, and recommendations for an information governance roadmap for future records management operations. Implementation of this program, in total, will provide a highly efficient management and disposition system for designated records.

The resulting tools will allow the City to improve best records management and information governance practices, and Generally Accepted Recordkeeping Principals^{®1}.

Phase 1 – Discovery, Assessment, Gap Analysis & Records Classification System

Phase Tasks

1. Introduce the program to City staff and management.
2. Designate Department Liaisons.
3. Develop a work plan and timeline estimate for the discovery and assessment process.
4. Evaluate physical records storage and management systems:
 - a. Interview the Department Liaisons to determine record series (types of records) maintained in each division.
 - b. Analyze active and inactive physical filing systems, access activities and quantities.
 - c. Review physical file listings, taxonomy and/or classification guides, if any.
 - d. Review box and file listings and databases provided by Corodata.
 - e. Determine document creation, routing, and final physical storage locations.
 - f. Review audio, video and microfilm storage and access activities, if any.
 - g. Determine adherence to the current records retention schedules, filing systems, and records management policies and procedures.
5. Review document management systems and information storage technology.
 - a. Evaluate electronic document activity and accessibility requirements on shared server volumes.
 - b. Evaluate file structure, holdings, templates and metadata used in Laserfiche.
 - c. Review other image and/or electronic document storage systems, where used.
 - d. Evaluate current document scanning processes and acquisition equipment.
 - e. Review use of process management software systems.
 - f. Review use of e-mail management software systems.
 - g. Determine adherence to the current records retention schedules and records management policies and procedures.

¹ © Generally Accepted Recordkeeping Principals & GARP are trademarked by the Association of Records Managers and Administrators, International.

EXHIBIT A

Records Control Services, Inc.

6. Evaluate physical and electronic document repositories for duplication outside of the Office of Record (managing department).
7. Determine most efficient storage medium for official records in each record series.
8. Create a function-based classification index of record series:
 - a. Organize records series by City function, and divisions or groups within each function.
 - b. Hierarchically assign identification codes to record series.
 - c. Integrate special series aspects into the index, where needed.
 - d. Assign preferred storage medium to record series.
 - e. Create a section for records regularly maintained within all City departments.
 - f. Submit to and review the draft index with Department Liaisons and/or management.
9. Evaluate the City's retention schedules for critical, important and useful updates.
10. Prepare a comprehensive report outlining results of the interviews and findings.
11. Present findings and a gap analysis to the Key Stakeholders.

To best evaluate current records storage systems and repositories, the Project Team will designate a contact person, or persons, within each department and division as the Records Coordinator. These staff members should be core users and/or managers of their department's paper and electronic documents.

RCS will develop a work plan and timeline for the evaluation process. Interview schedules and assessment timelines will depend on availability of Department Liaisons and staff, and RCS will coordinate with the Project Manager to schedule meetings.

RCS will meet with designated Department Liaisons to discuss records series maintained within their departments and evaluate document acquisition and access activity for the associated records. RCS will review all media storage types, including hardcopy records, audio and video recordings, microforms, electronic and any other document storage repositories.

Using the interview and evaluation data, RCS will create a hierarchical listing of records series organized by department and divisions or activities within each department. RCS will review the draft index with the Department Liaisons and integrate specific attributes, including confidentiality, vitality and/or historical nature, where necessary.

The resulting uniform index structure, or Uniform Functional Index of Records Series Taxonomy™ (UFIRST™ Index), becomes the record retention schedule format and can be used to quickly identify records in both physical and electronic storage systems.

RCS will prepare a report summarizing the results of the interviews, including:

- Physical filing systems properties.
- Volumes of physical active and inactive records maintained in repositories.
- An evaluation of physical file inventories and databases, where available.
- An evaluation of Laserfiche and any other electronic record repositories, where available.
- Compliance with current record retention schedules and records management policies and procedures.
- An analysis of retention schedule updates to meet current legal and business requirements.
- Areas of potential record duplication.
- Work plan and recommendations for improvements to evaluated systems.

Based on the analysis, RCS will provide a brief presentation to the Key Stakeholders on target areas for improvement and compliance with retention schedules within the departments.

RCS requires access to non-confidential areas of the City's Laserfiche electronic document management software, e-mail systems, shared server volumes, process management software

EXHIBIT A

Records Control Services, Inc.

systems and other sources of electronic document storage using secure company laptops connected to the City's network for the technology evaluation project tasks.

Phase Results

Implementation of this phase, in total, will provide the City with:

- A workplan and timeline for project implementation.
- A comprehensive evaluation and report of document acquisition, storage repositories and media formats.
- A uniform, function-based record series index to classify physical and electronic records.
- A presentation of findings and a gap analysis to the project's Key Stakeholders.

Phase Duration Estimates

Depending upon staff availability and current RCS client obligations, this phase can be completed in approximately 16 to 18 weeks after initiation. Availability of City staff for initial interviews and schedule reviews is essential to phase completion within RCS time estimates.

Phase 2 – RIM Policies/Procedures & Retention Schedules

Phase Tasks

1. Review and evaluate the City's current records management policies and procedures.
2. Recommend improvements and additional components to provide a comprehensive, clear and concise set of policies and procedures.
3. Review policies and procedures with the Project Team, modify as needed.
4. Develop updated records retention schedules:
 - a. Research governmental and regulatory body minimum required retention periods.
 - b. Assign suggested retention periods and summary descriptions of legal citations to each listed record series in the UFIRST™ Index.
 - c. Submit to and review updated retention schedules with Department Liaisons and/or management.
 - d. Integrate departmental operating retention requirements and administrative retention decisions into schedules, where needed.
 - e. Modify special series aspects into the retention schedules, where needed.
 - f. Submit retention schedules to Department Liaisons and management for final review and approval.
 - g. Review final draft retention schedules and policy suggestions with the Project Team.
 - h. Submit final draft retention schedules, in electronic format, for the City's legal counsel to review.

RCS will review the City's current records management related policies and procedures and make recommendations for improvements to address all essential aspects of the program. The resulting policy and procedure modifications are reviewed with the Project Team prior to approval by the City Council or executive management.

Retention research then is performed on the records series identified in Phase 1 to determine minimum legal retention requirements. Each records series entry will include a summary of the legal citation(s) associated with the series.

Citations summaries will include one or more of the following:

- Stated required retention period.
- Target document type, where available.
- Trigger action (i.e., completion of project, date of loss, meeting date, etc.)

RCS will review the retention schedules with the Department Liaisons and modify specific attributes, where needed. Administrative decisions extending or modifying the minimum

EXHIBIT A

Records Control Services, Inc.

requirements are added to the citations, where needed, to set precedence for record destruction in the normal course of business.

RCS will review the draft approved retention schedules with the Project Team prior to submission to legal counsel for final review. The City is responsible for direct review with legal counsel, and RCS will modify the schedules after the review, as needed.

The City shall have the final retention schedules approved by the City Council. The resulting approved retention schedules will address all City records and directly correlate retention periods with record series, regardless of physical or electronic format.

Phase Results

Implementation of the program, in total, will provide the City with:

- A comprehensive set of records and information management policies and procedures.
- Retention period suggestions for each record series, based on current regulations, legal citations, and industry recommendations.
- Department approved records retention schedules addressing all physical and electronic records.

Phase Duration Estimates

Depending upon staff availability and current RCS client obligations, this phase can be completed in approximately 8 to 10 weeks after initiation. Availability of department staff for schedule reviews is essential to phase completion within RCS time estimates.

Phase 3 – Records Management Program Implementation Strategy & Training

Phase Tasks

1. Develop an Information Governance roadmap for future records management program improvements.
2. Present highlights of the roadmap to the Project Team.
3. Develop a Records Retention Program reference guide for Department Liaisons, staff, and management.
4. Review reference guide with the Project Team, modify as needed.
5. Provide training sessions to the Department Liaisons and staff.
6. Submit sample Records Transfer Notice and Destruction Approval forms to the Project Team, modify as needed.

RCS will prepare an information governance roadmap with recommendations to help guide the City in future records and information management improvements. Based on the City's request, the roadmap will include, but is not limited to, the following components:

- Work plan and schedule for recommendations and strategies, including milestones and phases.
- Level of effort and cost estimates, with options, for successful implementation and ongoing (post-implementation) of records management program.
- Strategies to maintain a modern, functional, and flexible records program.
- Recommendations for records storage, maintenance, and management tools, including:
 - Furniture and equipment for efficient records storage.
 - Hardware and software for maintaining physical records.
 - Additional records management tools available to the City.
- Available retention processes that are automated and applicable across various record generating processes and systems, including costs and strategies for implementing automated processes across different enterprise systems.

EXHIBIT A

Records Control Services, Inc.

- Incorporation of data privacy, data mapping, data security classification, electronic document retention, management of paper documents, e-mail archival and unstructured data control.
- A reduction of impacts to existing and future document users and resources, including processes that access, use, generate, store, or destroy documents (including minimizing new requirements, responsibilities and processes related to managing documents).
- Recommendations on maximizing the availability and accessibility of documents for business and transparency purposes.
- Recommendations on minimizing the long-term costs associated with managing documents of all forms, including costs associated with onsite and offsite document filing, storing, and retrieving, as well as storing and backing up electronic documents.
- Recommendations on minimizing City liability associated with retaining and destroying documents and complying with applicable regulations and laws.
- Recommendations on minimizing the environmental impacts associated with hardcopy and electronic documents.
- Document destruction, transference, and conversion guidelines.
- Identifying space (internal or external) and equipment necessary for filing records.
- Develop benefit objectives offering sufficient information about the benefits of executing the provided roadmap.
- Recommendations for change management, training, and other ongoing program management activities such as self-auditing and future updates.
- Additional recommendations as needed.

RCS will prepare a presentation with highlights of the draft roadmap with the Project Team upon completion.

Based on the final records management policy, RCS will develop a set of procedures for working with the approved retention schedules and create a how-to reference booklet to distribute at training sessions. The booklet will include:

- Definitions of records management program terms
- Staff responsibilities
- General retention periods for certain administrative, transitory, reference and duplicate records.
- Procedures for analyzing records, determining retention periods, processing inactive records, and preparing records for destruction.
- Guidance and strategies for implementing the Information Governance roadmap.

The procedures and booklet are reviewed with the Project Team and modified, as needed, prior to in-house printing.

RCS will create a training presentation for the Department Liaisons, staff, and management based on the final policy, procedures, and the roadmap. After training, RCS will provide a sample Records Transfer Notice for processing inactive records, and a sample Destruction Approval Form for processing obsolete records.

Training will consist of up to 2 sessions based on staff availability. Depending upon the status of the current COVID-19 pandemic, training presentations may be completed either onsite or remotely.

Phase Results

Implementation of the program, in total, will provide the City with:

- Training and how-to guides for program maintenance.
- Department Liaisons trained in retention program terminology, policies, and operating procedures.

EXHIBIT A

Records Control Services, Inc.

- Guidance to comply with the State's Trustworthy Electronic Document or Record Preservation requirements.
- Recommendations for future improvements to information governance practices and Generally Accepted Recordkeeping Principals®.

Phase Duration Estimates

Depending upon staff availability, City Council approvals and current RCS client obligations, this phase can be completed in approximately 7 to 9 weeks after initiation. Availability of department staff for training is essential to phase completion within RCS time estimates.

EXHIBIT B

Records Control Services, Inc.

Attachment 1 – Cost Proposal

For each task during the term of the Agreement, please submit the estimated hours and extended cost. Proposers must submit cost proposals for the complete scope of work. Each cost option shall include all possible direct and indirect costs, travel, insurance, overhead, labor, profit, rebates, contingent commissions, renewal commissions, service fees, and any other expenses.

The City reserves the right to add or remove services over the contract term. The City reserves the right to award the Service(s) listed on this solicitation “individually”, by “groups”, “all or none”, or by any other method as deemed in the best interest of the City.

Task Description	Estimated Hours	Cost
Discovery / Assessment of Existing Records System and Procedures	126	\$ 24,570.00
Updated Records Retention / Destruction Policy	57.5	\$ 11,212.50
Strategic Roadmap & Training	67.5	\$ 13,162.50
TOTAL COSTS:		\$ 48,945.00

Please state the firm fixed hourly rates and list the position title for each project team member. The hourly rates shall be firm for the base term of the contract. Rates shall be fully burdened and include all labor, taxes, profit, general and administrative expenses, overhead, and insurance incurred by the Consultant. The below rates will apply to all tasks, additional supplemental services or for updated services outside of the existing scope of services.

Position Title	Fixed Hourly Rate
Principal Consultant	\$195.00/hour

(PLEASE READ AND MARK EACH CHECKBOX TO CONFIRM ACKNOWLEDGMENT AND AGREEMENT WITH THE INDICATED STATEMENTS)

<input checked="" type="checkbox"/>	The Proposal Cost provided reflects all possible direct and indirect costs, travel, insurance, overhead, labor, profit, rebates, contingent commissions, renewal commissions, service fees, and any other expenses.
<input checked="" type="checkbox"/>	The Proposal provided reflects any additional addendum(s) issued with respect to this RFP.
<input checked="" type="checkbox"/>	Submittal of this proposal indicated we have reviewed the proposed written agreement and if selected, would accept all terms of the proposed agreement.

Records Control Services, Inc.

Company Name

15 Cornwall Court

Address

Oakland, California 94611

City, State, Zip Code

510-530-6033

Telephone

Company Type: Corporation

Signed by

Bruce G. Meier, CRM, President/CEO

Print Name Title

EXHIBIT B

Records Control Services, Inc.

Cost Breakdown

RCS Professional Fees & Labor include all costs for system development and implementation and anticipated travel to and from City offices. Implementation costs are billed according to the schedules listed below by phase.

Phase 1 – Discovery, Assessment & Gap Analysis

RCS Professional Fees and Labor: \$ 24,570.00

Invoices for RCS Professional Fees and Labor will be submitted according to the following schedule:

Progress payment 1: \$6,142.50 at Phase initiation
Progress payment 2: \$6,142.50 upon completion of Phase Task 7
Progress payment 3: \$6,142.50 upon completion of Phase Task 9
Progress payment 4: \$6,142.50 upon completion of Phase Task 11

Phase 2 – RIM Policy/Procedures & Retention Schedules

RCS Professional Fees and Labor: \$ 11,212.50

Invoices for RCS Professional Fees and Labor will be submitted according to the following schedule:

Progress payment 1: \$3,812.25 at Phase initiation
Progress payment 2: \$3,700.13 upon completion of Phase Task 4.b
Progress payment 3: \$3,700.13 upon completion of Phase Task 4.h

Phase 4 – Information Governance Roadmap & Training

RCS Professional Fees and Labor: \$ 13,162.50

Invoices for RCS Professional Fees and Labor will be submitted according to the following schedule:

Progress payment 1: \$4,475.25 at Phase initiation
Progress payment 2: \$4,343.63 upon completion of Phase Task 2
Progress payment 3: \$4,343.63 upon completion of Phase Task 6

Fee & Payment Terms

- Unless otherwise noted, professional fees for each phase include all costs for labor and are firm for a period of 180 days from the date of this proposal.
- Invoices will be due upon receipt by the City, and payment must be received by RCS within 30 days of the invoice date. If payment is not received within 30 days of the invoice date, the invoice will be resubmitted with a 2.5% finance charge and a \$40.00 administrative fee added to the total invoice amount. Finance charges and administrative fees are compounded for each 30-day late period.
- On-demand contact time separate from this proposal will be billed at \$195.00 per hour, in 15-minute minimum increments. RCS will notify the City prior to incurring any unrelated contact time and obtain approvals from City management or the designated project manager.
- Travel expenses are included in the cost and are based on 12 workday visits to the City and include travel from and to RCS's Oakland offices. Additional travel time will be billed separately as incurred upon request and approval of the City.
- Project duration estimates depend upon City staff availability and current RCS client obligations. If project implementation is delayed due to availability of City staff, RCS reserves the right to modify payment schedules according to completed project tasks and/or delay timelines.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	PRK025
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	4	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-94 WITH CRP/VP MONTCLAIR VILLAGE OWNER, LLC., FOR CONSTRUCTION AND DEDICATION OF PARKLAND, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-94, a Parkland Dedication and Construction Agreement with CRP/VP Montclair Village Owner, LLC concerning dedication and construction of a neighborhood public park that is required through the entitlement process to be developed as a part of the Village at Montclair project.

A copy of proposed Agreement No. 22-94 is included in the agenda packet for the City Council's review and consideration.

BACKGROUND: As the City Council is aware, the Village at Montclair is located within the boundaries of the North Montclair Downtown Specific Plan (NMDSP) at 5050 Arrow Highway.

The Planning Commission and City Council approved the mixed-use project in late 2020. The mixed-use project will provide approximately 24,919 square feet of ground-level commercial lease space and 330 permanent apartment units in an urban-styled mixed-use community with onsite amenities, including walkable design features and a 0.22-acre neighborhood public square on 6.68 gross acres of land.

The NMDSP was adopted by the City Council on May 16, 2006 and amended in 2017. The NMDSP encourages development following urban-style design patterns focused around travel nodes within proximity to commercial shopping opportunities and public transit. The NMDSP provides for public spaces including neighborhood squares, parks, plazas, and other minor public monuments. The development of a park for public use was called out in the NMDSP for the area being developed as the Village at Montclair.

Through the City's Conditions of Approval, the developer of the Village at Montclair, CRP/VP Montclair Village Owner, LLC., has been charged with the dedication of land and construction of the public park.

The most salient terms of the Parkland Dedication and Construction Agreement include the following provisions:

- The California Government Code and the Montclair Municipal Code require the dedication of land or payment of in-lieu fees to offset the impact of residential development on the parks and recreation needs of the community (Quimby Act provisions). According to the City's Quimby Act provisions, the Village at Montclair is required to dedicate 431 square feet of parkland per unit and/or pay an in-lieu fee of \$2,800 per unit. Therefore, for dedication purposes, the Village at Montclair Project would be required to provide approximately 3.27 acres of parkland. Notwithstanding the 3.27 acres required for dedication purposes, the

NMDSP provides a planning area of less than an acre for a neighborhood public park. For this reason, the developer would dedicate .31 acres for the construction of the park. The parkland has been dedicated on the final map for the project. The dedication of .31 acres fulfills the park dedication obligation for only 31 units. The parkland obligation for the 299 remaining units is \$837,200, based upon the \$2,800 per unit in-lieu fee.

- The developer is willing to construct the improvements and amenities needed to develop the park. As a result, the developer would be entitled to a credit against the payment of the remaining \$837,200 of in-lieu fees. The developer is required to pay/deposit with the City the sum of \$837,200 in satisfaction of required park in-lieu fees for the construction of the remaining 299 residential units within the Project. Alternatively, the developer may establish an irrevocable letter of credit or similar security instrument given as a “set-aside” or reserve agreement (“Security Instrument”) between the developer’s construction lender, develop and the City, in the amount of \$837,200 to carry out design and construction of the park.
- The developer has presented a conceptual design for the park to City staff, The City would have the right to approve the final construction plans and design for the park and the final construction budget. All improvements in the park after construction would be presented to the City in a turnkey condition consistent with the NMDSP and City approvals.
- The developer is entitled to seek reimbursement in an amount equal to the costs incurred in the design, construction, and furnishing of facilities and equipment necessary for the City to accept and use the park. The following conditions would apply to reimbursable costs:
 1. No credit would be given for items that would not have been incurred by the City, had the City designed and constructed the park.
 2. No credit would be given for legal, insurance, security, or construction management costs or miscellaneous fees unrelated to direct design and construction costs.
 3. Park design costs would be capped at 5 percent of the total construction costs.
 4. No credit would be given for payment of any City permit fees or charges.
 5. The amount of reimbursement would be capped at \$837,200. Any costs exceeding that amount would be borne exclusively by the developer. Any unused balance of the \$837,200 upon completion of the park would be paid to the City.
- Developer acknowledges that construction of the park is subject to requirement of California Labor Code Section 1720 et seq. and 1770 et seq. as well as the California Code of Regulations, Title 8, Section 1600 et seq., which requires the payment of prevailing wages and performance of other requirements of public works projects.

- The developer will construct the park and park improvements simultaneously with the construction of the first building for which building permits are issued. Developer will pursue development and construction of the park diligently to completion. In no event shall certificates of occupancy for the final building be issued until the park has been completed
- The developer and the City agree that maintenance of the park and park facilities will be covered via creation of a new Community Facilities District No. 2022-1.
- The developer will meet all appropriate insurance, indemnity, and hold harmless requirements.

FISCAL IMPACT: Approval of proposed Agreement No. 22-94 provides the City with a new public park as a community asset. Acquisition and development of a new park in this location would exceed \$1 million if the City were to pursue such an action. Maintenance of the park would become the responsibility of the City; however, costs related to maintenance and upkeep of the park would be covered by a proposed future Community Facilities District.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22-94 with CRP/VP Montclair Village Owner, LLC., for construction and dedication of parkland, subject to any revisions deemed necessary by the City Attorney.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Montclair
City Clerk
5111 Benito Street
Montclair, California 91763

[Free Recording Requested Pursuant to GC §6103]

AGREEMENT NO. 22-94

**PARKLAND DEDICATION AND CONSTRUCTION AGREEMENT
[Village at Montclair: By CRP/VP Montclair Village Owner, LLC]**

THIS PARKLAND DEDICATION AND CONSTRUCTION AGREEMENT ("Parks Agreement"), dated as of September 19, 2022 for reference purposes only, is made and entered into by and between the **CITY OF MONTCLAIR**, a California municipal corporation ("City") and **CRP/VP Montclair Village Owner, LLC**, a Delaware limited liability company ("Owner"). City and Owner are sometimes collectively referred to in this Agreement as the "Parties" or individually as the "Party." This Parks Agreement is made with reference to the following:

RECITALS:

A. Owner has submitted requests to City for approval of certain land use entitlement applications including a final tract map, Precise Plan of Design (PPD), and building height and setback variances ("Project Entitlements") to construct approximately 24,919 square feet of ground level commercial lease space and 330 permanent apartment units in an urban-styled mixed-use community with on-site amenities, including walkable design features and a .31-acre neighborhood public square park ("Project") on a 6.68 (gross)-acre parcel of land generally located on the north side of Arrow Highway and the terminus of Fremont Street (5040-5050 Arrow Highway) in the City of Montclair ("Subject Site") within the boundaries of the North Montclair Specific Plan. The Subject Site is more particularly described in Exhibit "A" attached to this Parks Agreement and incorporated herein by reference.

B. The Project Entitlements were approved by the City Council of the City of Montclair on December 7, 2020 in accordance with Resolution No. 20-3285 and subject to the Conditions of Approval attached thereto.

C. The Subject Site was approved by the City Council in contemplation that the Project, including the proposed .31-acre park would be consistent with the North Montclair Specific Plan ("Specific Plan") which encourages development following urban-style residential design patterns focused around travel nodes within close proximity to commercial shopping opportunities. In addition, the Specific Plan provides that sites need to be made available for the development of "neighborhood squares and parks" of sufficient size to accommodate modest playgrounds, dog-runs, or minor public monuments.

C. Condition Nos. 14(c) and 19 attached to Resolution No. 20-3285, approving the Project Entitlements, California Government Code, Section 66477, the City's Quimby

provisions contained in Section 11.38.080 of the Montclair Municipal Code (“MMC”) and the City’s periodic adoption of land dedication and in lieu fee amounts (“Dedication & Fee Sheet”) require this Project to dedicate land and/or pay park in lieu fees to off-set the impacts of residential development on the park and recreation needs of the Project and the community. Section 11.38.030 of the MMC authorizes the City to require a combination of dedication and payment of in-lieu fees if the City determines that the combination would better serve the public.

D. According to the City’s Quimby provisions and the Fee & Dedication Sheet, the Project is required to dedicate approximately 431 square feet of parkland per unit and/or pay an in lieu fee of \$2,800 per unit. Thus, the Project will be required to dedicate approximately 3.27 acres of total parkland, if only the dedication of land is required.

E. Notwithstanding the 3.27 acres of parkland required to be dedicated, the Specific Plan shows that this portion of the planning area requires an approximate .31 acre neighborhood park, since the City’s other existing parks can accommodate the parkland/recreation needs of the Project. For that reason, Owner is willing to dedicate land for construction of a .31 acre neighborhood park and pay park in lieu fees for the remainder of the Project’s parkland obligations. According to the Dedication & Fee Sheet, dedication of .31 acres of land fulfills the dedication obligations of 31 of the proposed 330 units within the Project (13,361 sq. ft. (.31 acres) divided by 431 sq. ft per unit required pursuant to Dedication & Fee Sheet = 31 units). Thus, Owner’s remaining parkland obligations consist of the payment of approximately \$837,200 in in-lieu fees (Based upon \$2,800 per unit x 299 units (330 units – 31 units)).

F. Owner is also willing to construct all improvements and amenities needed to fully develop a functioning .31-acre neighborhood park for the benefit of the future residents of the Project. As a result, Owner will be entitled to a credit against the payment of the remaining \$837,200 in in-lieu fees for the Project in an amount representing the reasonable development costs for the construction of the neighborhood park in accordance with Government Code, Section 66477 (a)(9).

G. Notwithstanding Owner’s right to receive credit against the payment of park-in-lieu fees, Owner has agreed to that, in accordance with Condition No. 19 of the approved conditions of approval for the Project Entitlements, no credit/reimbursement shall be provided to Owner in excess of the amount of in-lieu fees that are otherwise so payable by Owner to the City as so provided.

H. Therefore, the parties intend for this Parks Agreement to implement the requirements of Condition Nos. 14(c) and 19 of the Project Entitlements, Government Code, Section 66477, Section 66477 of the MMC and the City’s adopted Dedication & Fee Sheet and further clarify the method by which Owner will be provided with a fee credit pursuant to Government Code, Section 66477(a)(9), establish the timing of the proposed park dedication and construction of the improvements, describe the maintenance responsibilities and to provide City and Owner with certainty while the Project is developed.

I. This Parks Agreement is not intended to increase or decrease any park obligations but instead clarify the responsibilities of the parties as approved by Resolution No. 20-3285 for the Project Entitlements.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises, covenants, conditions and restrictions herein contained, the parties hereto declare, covenant and agree as follows:

TERMS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 **Defined Terms.** Unless otherwise provided in this Parks Agreement, capitalized terms used herein shall have the meanings ascribed to them. The following terms shall have the respective meanings assigned to them in this Section [1.1] unless the context in which they are used clearly requires otherwise:

"Certificate of Occupancy" means a certificate or permit issued by the City, authorizing the release of utilities and occupation of the building(s) and/or a unit in the Project.

"City" means the City of Montclair, California.

"City Manager" means the Montclair City Manager or his/her designee.

"County" means the County of San Bernardino, California.

"Development Plan" means the approved site plan, elevations and preliminary landscape plan approved by the City.

"Event of Default" shall have the meaning set forth in Article 8 of this Parks Agreement.

"Park" means the park depicted on the conceptual park plan shown on Exhibit "C".

"Park Improvements" means the improvements to the Park in accordance with the Conceptual Park Improvement Plan and the City-approved park construction documents.

"Project" has the meaning set forth in Recital "A," above.

"Property" or "Subject Site" has the meaning set forth in Recital "A," above.

"Term" shall have the meaning set forth in Section 2.1.

"Unit" means a dwelling unit in the Property.

1.2 **Singular and Plural Terms.** Any defined term used in the plural in this Parks Agreement shall refer to all members of the relevant class and any defined term used in the singular shall refer to any number of the members of the relevant class. Reference to "party" or the "parties" shall refer to both City and Owner.

1.3 **Accounting Principles.** Any accounting term used and not specifically defined in this Parks Agreement shall be construed in conformity with, and all financial data required to be submitted under this Parks Agreement shall be prepared in conformity with, generally accepted accounting principles applied on a consistent basis or in accordance with such other principles or methods as are reasonably acceptable to the City Manager.

1.4 **References and Other Terms.** Any reference to any other document shall include such document both as originally executed and as it may from time to time be modified. References herein to Articles, Sections and Exhibits shall be construed as references to this Parks Agreement unless a different document is named. References to subparagraphs shall be construed as references to the same Section in which the reference appears. The term "document" is used in its broadest sense and encompasses agreements, certificates, opinions, consents, instruments and other written material of every kind. The terms "including" and "include" mean "including (include) without limitation". References herein to statutes, laws, codes,

ordinances or regulations by specific number (e.g., Government Code, Section 66477) shall mean such statute, law, code, ordinance or regulation as it existed as of the date of this Parks Agreement and as it may be amended from time to time thereafter.

1.5 **Exhibits Incorporated.** All attachments and exhibits to this Parks Agreement, as now existing and as the same may from time to time be modified, are incorporated herein by this reference.

2. **TERM OF AGREEMENT**

2.1 **Term.** The term of this Parks Agreement (“Term”) shall commence on the date it is recorded in the Official Records of the County (“Effective Date”) and shall expire upon the following:

A. The Park is constructed and accepted by the City of Montclair into its park system and/or Owner conveys a grant deed conveying fee title ownership to the land and improvements constructed; and

B. The date on which the last Certificate of Occupancy is issued for any single building or unit within a building in the Project.

3. **PARKLAND DEDICATION & IN LIEU FEE REQUIREMENTS**

3.1 Dedication of Parkland. Owner shall offer to dedicate to City on the final map for the Project (or by separate instrument if no map is recorded), .31 acres of land to be used for park and recreational purposes in the area shown on the vicinity map attached hereto as Exhibit “B” to this Parks Agreement. Such dedication shall satisfy the parkland dedication requirements of .31 acres within the Project as required by the Project Entitlements.

3.1.1 Improvement of Park. Owner hereby further agrees to construct, at its sole cost and expense, all improvements on the Park Property for the full development of the Neighborhood Park, and to dedicate all improvements to City, the acceptance of same by City shall be subject to and in accordance with the terms of this Agreement.

3.1.2 Duty to Post Security. Within one (1) month of the Effective Date of this Agreement, Owner shall provide or require its construction contractor to provide to City, a performance and payment bond (“Performance Bond”), in the amount of \$837,200, for costs identified on Exhibit “D” attached hereto and made part of this Agreement, (“Cost Estimate”) for the costs of constructing the Neighborhood Park and its improvements and to provide proof thereof to City. The Performance Bond shall guarantee the faithful performance of this Agreement. In lieu of a bond, the Owner may provide other security acceptable to the City Engineer and the City Attorney in an amount equal to the required bond.

3.1.2.1 Form of Bond. The Performance Bond shall be in a form acceptable to the City Engineer and the City Attorney.

3.1.2.2 Bond Term. The Performance Bond shall remain in full force and effect for the term of this Agreement, and until such time as the City in writing affirmatively releases Owner from its bond obligation.

3.1.2.3 Certificate of Agency. All bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act.

3.1.2.4 Licensing and Rating. The Performance Bond shall be duly executed by responsible surety companies admitted to do business in the State of

California, licensed or authorized in the jurisdiction in which the Neighborhood Park is located to issue bonds for the limits required by this Agreement, secured through an authorized agent with an office in California, and have a minimum AM Best rating of “A-” to an amount not to exceed ten percent (10%) of its capital and surplus.

3.1.2.5 Insolvency or Bankruptcy. If the surety on any bond furnished by Owner is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where the Neighborhood Park is located, Owner shall within seven (7) calendar days thereafter substitute or require the substitution of another bond and surety, acceptable to City.

3.1.2.6 Increase in Amount of Performance Bond. If, at any time, following the execution of this Agreement, the estimated costs of the Neighborhood Park are anticipated to exceed the Cost Estimate, Owner shall at City’s direction, within thirty (30) calendar days, increase the amount of the Performance Bond by the change in the Cost Estimate.

3.1.2.7 Attorney’s Fees. In the event City prevails in an action upon any bond posted, City shall be entitled to reasonable attorney’s fees to be fixed by a court.

3.1.2.8 Early Release of Bond. Any time following the execution of this Agreement, the bond for this Agreement may be released or reduced if a subsequent bond is provided for the construction of the Neighborhood Park that satisfy this Agreement, to the satisfaction of the City Engineer.

3.1.3 Within thirty (30) days following: (i) completion of the park improvements; (ii) City’s issuance of a Certificate of Completion for the Park Improvements; and (iii) completion of the public improvements adjacent to the park, Owner shall provide a grant deed to City, in a form acceptable to the City Attorney, evidencing fee title ownership to the park site and park improvements thereon. All property conveyed to City pursuant to this agreement shall be free and clear of any liens, encumbrances and easements, except those easement identified in the final map. Any accrued and unpaid real property taxes, easements or special taxes shall be paid by Owner until deed has been accepted by City and fee title is transferred to City.

3.1.4 Model Units. City agrees that model units may be issued building permits and constructed prior to Owner posting the Performance Bond. The model units may only be occupied as model units, no certificate of occupancy may be issued until the Performance Bond has been posted. Prior to the issuance of building permits for the model units, Owner shall pay City the then applicable Park In-Lieu Fee for the units. The Parties agree that the Park In-Lieu Fees paid for the model units shall be credited against the remaining Park In-Lieu Fees or other fees payable to City for production units within the Project.

3.2 **Payment of Park In-Lieu Fees.** In addition to the offer of dedication of land and improvements to the .31-acre park, and prior to the issuance of any building permit, Owner shall pay/deposit with City the sum of \$837,200 in satisfaction of required additional park in lieu fees for the construction of the remaining 299 residential units within the Project. Alternatively, Owner may establish an irrevocable letter of credit or similar security instrument given as a “set-aside” or reserve agreement (“Security Instrument”) between Owner’s construction lender, Owner and the City, in the amount of \$837,200 provided such financial institution is subject to regulation by the state or federal government pledging that the funds necessary to carry out the design and construction of the park improvements are on deposit and guaranteed for payment. City shall

have the right to approve any releases of the Security Instrument, upon and subject to the provisions and conditions hereof.

Upon satisfactory written proof, including, but not limited to, consultant and contractor estimates, invoices, materials and equipment estimates, invoices and bills showing that park design and construction obligations have been incurred, and subject to the limitations contained in Section 3.3 below, City may authorize release of all or portions of the security as work progresses. Owner may make monthly applications for payment to City, and City shall endeavor to approve and authorize financial institution to pay such requests no later than ten (10) days after receipt of such request. If Owner elects to pay/deposit the park in lieu fee with the City, City shall endeavor to approve and authorize payment requests no later than ten (10) days after receipt of such request.

3.3 Reimbursement for Construction of Park Improvements. Owner has planned to design the park and construct the improvements necessary to establish the neighborhood park identified in the Specific Plan. Notwithstanding the payment of park in lieu fees or establishment of a Security Instrument with an approved financial institution required by Section 3.2, Owner shall design and construct the neighborhood park identified in Exhibit "B" in accordance with the conceptual park design plan attached hereto as Exhibit "C" ("Conceptual Plan"). Owner shall be entitled to reimbursement of park fees required to be submitted to City in Section 3.2 in an amount equal to the reasonable costs incurred in the design, construction and furnishing of facilities and equipment necessary to accept and use the neighborhood park in accordance with the Conceptual Plan and in Turnkey condition, subject to the following:

- (a) No credit shall be provided for items that would not have been incurred by City, had City designed and constructed the park;
- (b) No credit shall be provided for legal, insurance, security, construction management or other miscellaneous fees and costs unrelated to the direct costs of design and construction of the park;
- (c) Park design costs shall be capped at 5% of the total construction costs.
- (d) No credit shall be provided for payment of any required City permit fees and charges, including, but not limited to, grading permits, utility permits, building permits, and certificates of completion/occupancy.
- (e) Credit shall be capped at \$837,200. Park design and development costs exceeding \$837,200 shall be borne exclusively by Owner and City shall have no responsibility to provide credit or reimbursement to Owner beyond the in lieu payments deposited by Owner.

3.4 Approval of Final Construction Budget & Plans. City shall have the right to approve the preliminary and final construction budget and plans for the Park. All improvements provided in the Park shall be in Turnkey condition and consistent with the depictions in the Specific Plan and City codes, ordinances and policies.

3.5 Timing of Park Construction. Owner shall construct the Park and Park improvements simultaneously with the construction of the first building for which building permits are issued. Owner shall pursue development and construction of the Park diligently to completion. In no event shall certificates of occupancy for the final building be issued until the Park has been completed.

3.6 Completion of Park Improvements and Documentation of Costs. Upon completion of the improvements and installation of facilities identified in the Conceptual Plan and final construction plans, City shall issue Owner a certificate of completion/occupancy and take

actions necessary to accept the Park in the City's park system. City's issuance of a certificate of completion/occupancy may be subject to completion of a list of corrective actions indicated on a "punch-list" to be created during final inspection. Owner shall diligently complete all corrective actions indicated on the punch-list until City is able to issue a certificate of completion/occupancy ("Certificate of Completion").

Owner shall within sixty (60) days of the Completion of Construction, provide City for its review and approval, all documentation City reasonable requires to evidence the completion and final costs of the Park, reflecting as necessary the limitations in Section 3.3. City approval of that cost documentation shall constitute confirmation of the acreage required to be dedicated by Owner.

3.7 Reimbursement for Completed Improvements. Upon receipt and confirmation of the final construction costs for the Park, City shall reimburse Owner the amount of such reasonable final construction costs in an amount not to exceed \$837,200. To the extent the final construction costs are less than \$837,200, City shall be entitled to keep the difference and place it in City's Quimby account for use in Parks elsewhere in the City consistent with the Quimby Act. To the extent the final construction costs exceed \$837,200, Owner shall **not** be entitled to any further reimbursement or credit from City.

3.8 Community Facilities District. City and Owner agree that the maintenance of the Park may be covered via inclusion of the Park in a community facilities district to be established by City and Owner prior to recordation of the final map or issuance of the first building permit, whichever occurs first. Funds collected for park maintenance shall be used solely and entirely on the Park and will not be used to cover the maintenance costs of other park facilities in the City, unless such facilities are included in the community facilities district boundaries.

3.9 Acknowledgement of Prevailing Wage Laws. Owner is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Owner contends that development of the Park is not subject to the payment of prevailing wages. However, if the Park development is deemed an applicable "public works" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Owner agrees to fully comply with such Prevailing Wage Laws. City shall provide Owner with a copy of the prevailing rates of per diem wages in effect at the commencement of this Parks Agreement at the request of Owner. Owner shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the available to interested parties upon request, and shall post copies at the Owner's principal place of business and at the Park site. Owner shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

4. INDEMNIFICATION.

4.1 Indemnification. Owner shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Owner, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance or construction of the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Owner shall defend, at Owner's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees,

agents or volunteers. Owner shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Owner shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Owner's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

5-6. Reserved.

7. **DEFAULTS**

The occurrence of any of the following, whatever the reason therefor, shall constitute an "Event of Default" by Owner:

(a) Owner fails to perform any obligation under this Agreement, and such failure is not cured within thirty (30) days after Owner's receipt of written notice that such obligation was not performed; provided that, if cure cannot reasonably be effected within such thirty (30)-day period, such failure shall not be an Event of Default so long as Owner (in any event, within fifteen (15) days after receipt of such notice) commences cure, and thereafter diligently and continuously prosecutes such cure to completion; or

(b) Owner is enjoined or otherwise prohibited by any governmental agency (other than City) from occupying all or any of the Property and such injunction or prohibition continues unstayed for ninety (90) days or more for any reason; unless Owner is diligently and continuously attempting to have such injunction or prohibition stayed or lifted and Owner demonstrates, to the reasonable satisfaction of the City Manager, that such stay or lifting will occur within a reasonable time.

8. **REMEDIES**

8.1 **Remedies Upon Default.** Upon the occurrence of any Event of Default, City may, at its option and in its absolute discretion, do any or all of the following:

(a) **Specific Performance.** By mandamus or other suit, action or proceeding at law or in equity, require Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of City hereunder

(b) **Exercise Other Rights.** Exercise any other rights provided by law or in such order and manner as City elects in its sole and absolute discretion.

(c) **Terminate Agreement.** Terminate this Parks Agreement. Termination in such event shall be effective immediately upon Owner's receipt of written termination notice from City. No act by City other than giving notice to Owner shall terminate this Parks Agreement. In the event of such a termination, any rights or remedies for breach of this Parks Agreement shall survive.

8.2 **Cumulative Remedies; No Waiver.** City's rights and remedies under this Parks Agreement are cumulative and in addition to all rights and remedies provided by law. The exercise by City of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice City in the exercise of any other right or remedy. No waiver of any default shall be implied from any omission by City to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any

provision of this Parks Agreement shall be construed as a waiver of any subsequent breach of the same provision. City's consent to or approval of any act by Owner requiring further consent or approval shall not be deemed to waive or render unnecessary City's consent to or approval of any subsequent act. City's acceptance of the late performance of any obligation shall not constitute a waiver by City of the right to require prompt performance of all further obligations. City's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of City's right to proceed with the exercise of its remedies for any unfulfilled obligations; and City's acceptance of any partial performance shall not constitute a waiver by City of any rights relating to the unfulfilled portion of the applicable obligation. City shall have the right to pursue damages for Owner's defaults but in no event shall Owner be entitled to damages of any kind from City, including, but not limited to, damages for economic loss, lost profits, or any other economic or consequential damages of any kind or nature.

9. COVENANTS TO RUN WITH THE LAND

Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. City hereby declares its express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors in interest to all or any part of the Property; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying all or any part of the Property, or any interest therein, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments.

10. MECHANIC'S LIEN RELEASES.

Owner understands and agrees that no acceptance of the parkland improvements and facilities will be provided by City, pursuant to Section 3.6 above, until Owner has furnished Mechanic's Lien Releases in proper statutory form signed by all contractors and sub-contractors of any tier, material suppliers who have performed work or furnished materials to the job site, releasing all lien rights for work performed and materials furnished through the date of final inspection. Should any claim, lien or Stop Notice be provided, filed or recorded for any work or labor performed or materials used on, furnished to, the Property described in this Agreement, Owner shall pay and satisfy such lien or judgment.

11. UNIFORMITY; COMMON PLAN

The covenants, reservations and restrictions hereof shall apply uniformly to the Property in order to establish and carry out a common plan for the use, development and improvement of the Property.

12. MISCELLANEOUS

12.1 **Governing Law.** This Parks Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

12.2 **Amendments.** This Parks Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the Official Records.

12.3 **Notice.** All notices, certificates or communications shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been

IN WITNESS WHEREOF, City and Owner have executed this Parks Agreement by duly authorized representatives, all on the date first written hereinabove.

“OWNER”

**CRP/VP Montclair Village Owner, LLC.,
Delaware limited liability company**

By: _____

Name:

Its:

Date: _____

“CITY”

**CITY OF MONTCLAIR, a California municipal
corporation**

By: _____

Javier “John” Dutrey
Mayor

Date: _____

ATTEST:

By: _____

Andrea Myrick
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____

Diane E. Robbins
City Attorney

Date: _____

EXHIBIT "A"
LEGAL DESCRIPTION

LEGAL DESCRIPTION

APN: 10007-701-01

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MONTCLAIR IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS: PARCEL(S) 1 THROUGH 6, INCLUSIVE, OF TRACT MAP NO. 20273, IN THE CITY OF MONTCLAIR, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 363, PAGES 54-57 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, CALIFORNIA.

EXHIBIT "B"
VICINITY MAP

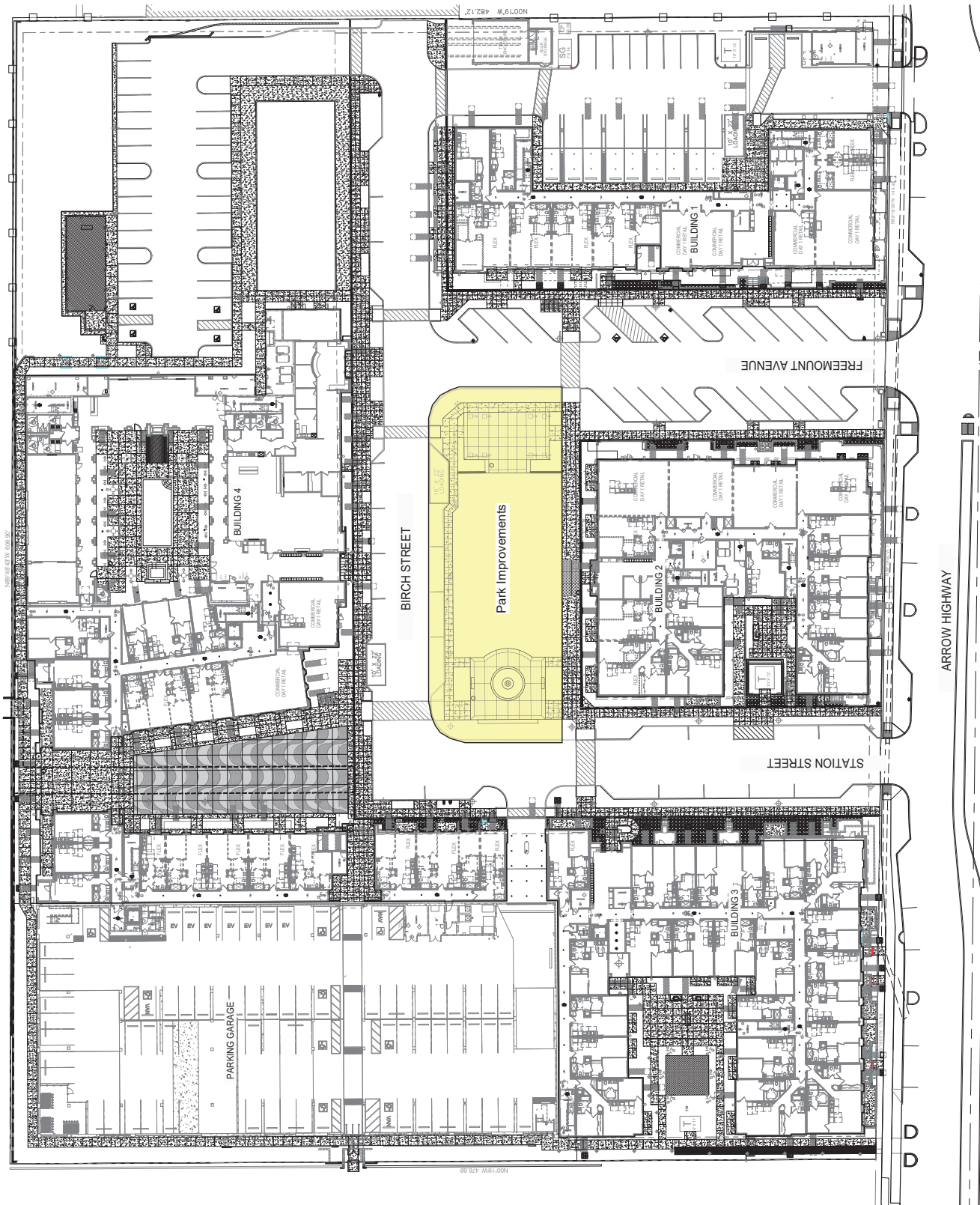


EXHIBIT "C"
CONCEPTUAL PLAN

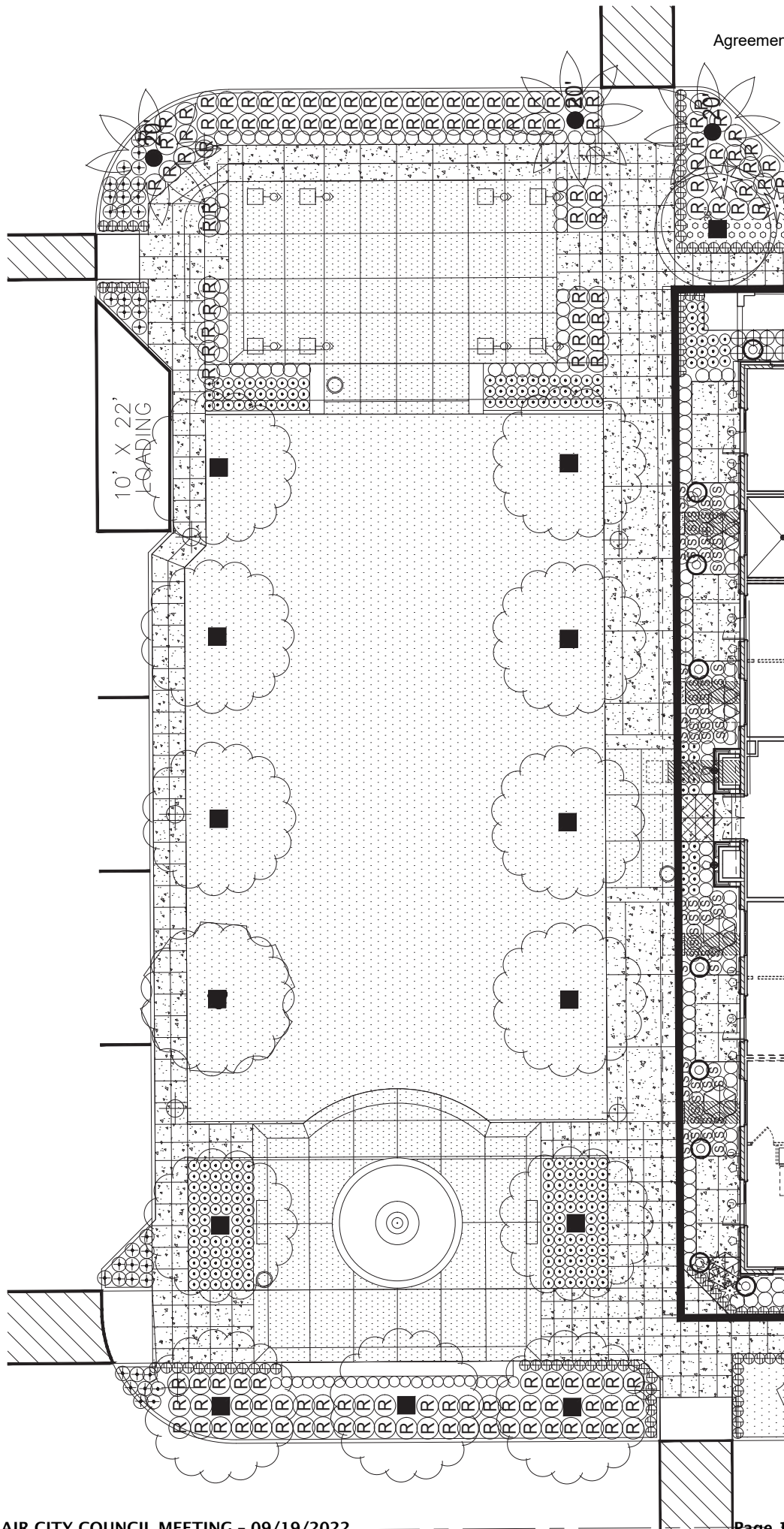


EXHIBIT "D"
CONSTRUCTION ESTIMATE

The Village at Montclair Central Park Cost Estimate

CDR
 695 Town Center Drive, Suite 110
 Costa Mesa CA, 92626
 (949) 610-8997

7/20/2022

Item #	Description		Unit		Total
Street					
1	CONSTRUCT PCC CURB (6" HEIGHT) AND GUTTER (1.5' WIDE)	573	LF	\$30.00	\$17,190.00
2	CONSTRUCT LOCAL DEPRESSIONS AT CATCH BASINS	2	EA	\$500.00	\$1,000.00
3	GRADING	13547	SF	\$2.67	\$36,125.76
4	INSTALL TRUNCATED DOMES (DETECTABLE WARNING)	60	SF	\$24.00	\$1,440.00
5	SIGNAGE	1	LS	\$2,100.00	\$2,100.00
6	INSTALL CURB INLETS	2	EA	\$5,200.00	\$10,400.00
7	INSTALL AREA DRAINAGE	13547	SF	\$1.76	\$23,843.00
8	INSTALL LANDSCAPING INLET DRAINS	7	EA	\$225.00	\$1,575.00
9	INSTALL FOUNTAIN	1	EA	\$125,000.00	\$125,000.00
10	INSTALL LANDSCAPING & IRRIGATION	7,710	SF	\$27.95	\$215,475.00
11	INSTALL SIDEWALK	3,438	SF	\$10.00	\$34,380.00
12	INSTALL HARDSCAPE PAVERS & CONCRETE WALLS	2,152	SF	\$61.33	\$131,989.20
13	INSTALL STREET LIGHTS	4	EA	\$16,690.00	\$66,760.00
14	ELECTRICAL	13547	SF	\$2.62	\$35,493.56
15	INSTALL ASPHALT	573	LF	\$16.20	\$9,282.60
16	INSTALL MISC EQUIPMENT	1	LS	\$6,500.00	\$6,500.00
17	INSTALL BENCHES	2	EA	\$2,400.00	\$4,800.00
	SUBTOTAL				\$723,354.12
1	GENERAL CONDITIONS & REQUIREMENTS, INSUR, CONTINGENCY & FEE				\$214,836.17
2	DESIGN			5.00%	\$36,167.71
3	INSPECTIONS			1.25%	\$9,041.93
	SUBTOTAL				\$260,045.81
	SUBTOTAL				\$983,399.93
1	LAND COST	13547	SF	\$40.00	\$541,886.40
	TOTAL				\$1,525,286.33



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	EDD100
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ECONOMIC DEV.
ITEM NO.:	5	PREPARER:	M. FUENTES
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-95 WITH UNIVERSITY ENTERPRISES CORPORATION AT CALIFORNIA STATE UNIVERSITY SAN BERNARDINO TO PROVIDE TECHNICAL ASSISTANCE AND OUTREACH SERVICES TO SMALL BUSINESSES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-95 with University Enterprises Corporation at California State University San Bernardino to provide technical assistance and outreach services to small businesses.

A copy of proposed Agreement No. 22-95 with University Enterprises Corporation at California State University San Bernardino is attached for City Council review and consideration.

BACKGROUND: The University Enterprises Corporation at California State University San Bernardino (UEC) is a 501(c)(3) nonprofit corporation that provides a vast array of technical assistance to small businesses and aspiring entrepreneurs throughout the Inland Empire and functions as the business enterprise center for California State University San Bernardino (CSUSB).

UEC serves as the grantee for federal, state, and local funding for research and sponsored projects for CSUSB.

UEC partners with the Inland Empire Center for Entrepreneurship, California State University San Bernardino (Small Business Development Center, Women's Business Development Center, and Inland Center for Entrepreneurship CSUSB), California State University San Bernardino, America's Small Business Development Center, and United States Small Business Administration.

Montclair, Montclair Place, UEC Partnership

Staff was recently approached by UEC regarding the possibility of entering into a partnership with the City of Montclair to provide technical assistance to small businesses and aspiring entrepreneurs in the Montclair community.

As part of UEC conversations with City Staff, UEC noted that they were also in conversations with representatives from Montclair Place regarding the possibility of partnering with Montclair Place to locate one of their satellite offices there.

UEC anticipates operating a Small Business Development Center, a Women's Business Development Center, and the Inland Center for Entrepreneurship at Montclair Place.

UEC asked if the City of Montclair would be willing to provide monetary assistance that could be used to leverage additional state and federal funding sources to offsets costs

associated with running the satellite office at Montclair Place and administrative costs. UEC noted that Montclair Place would be willing to provide UEC with a lease space without cost as part of Montclair Place's partnership with UEC. Staff responded that the City of Montclair would be interested in partner with UEC in order to further provide technical assistance and outreach services to small businesses located in Montclair.

Agreement No. 22-95

Agreement No. 22-95 would provide funding to the UEC for providing technical assistance to small businesses and aspiring entrepreneurs in the Montclair community. Below is a list of services that will be provided by UEC as part of the proposed agreement.

- Provide technical assistance related to business planning, loan proposals, finance, bookkeeping, taxes and licenses, marketing, management, human resources, and government procurement procedures.
- Advise and counsel businesses about:
 - Business plan development, start-up requirements, business management, and expansion strategies;
 - Marketing, advertising, financial analysis, and human resources management;
 - Government procurements, funding sources, resources referrals, patents, trademarks, and copyrights; and
 - Loan applications, buying and selling a business, franchising, and social media and internet marketing.
- Provide for the support and nurturing of businesses and the development of an entrepreneurial environment through cooperation with other local, county, state, and federal economic development organizations.

The University Enterprises Corporation at California State University San Bernardino (UEC)

UEC provides no-cost extensive long-term professional business advising, low-cost training, and other specialized services to local businesses and residents.

Beyond its core services, the UEC provides specialized assistance in QuickBooks, franchise and service-based operations, government contracting, website search engine optimization, and securing funding from both traditional and nontraditional sources.

UEC staff members include certified QuickBooks ProAdvisors who can assist businesses with accounting systems, marketing specialists who can help businesses attract new clients and increase sales, loan consultants with lending preference knowledge, tax specialist for personnel, self-employment, etc., and procurement specialists who can help business bid on local, state, and federal solicitations.

UEC partners with the Economic Development Departments of San Bernardino and Riverside Counties, and the Cities of Chino, Hesperia, Moreno Valley, Rancho Cucamonga, Riverside, San Bernardino, Victorville, and Upland. UEC is also currently negotiating agreements with several other surrounding agencies.

FISCAL IMPACT: Proposed Agreement No. 22-95 with UEC would result in a cost to the City of Montclair of \$25,000, with the term of the agreement ending on June 30, 2023. Costs associated with Agreement No. 22-95 would be payable from the Economic Development Fund.

RECOMMENDATION: Staff recommends that the City Council approve Agreement No. 22-95 with the University Enterprises Corporation at California State University San Bernardino to provide technical assistance and outreach services to small businesses, subject to any revisions deemed necessary by the City Attorney.

AGREEMENT NO. 22-95

CITY OF MONTCLAIR
5111 BENITO STREET
MONTCLAIR, CALIFORNIA 91763

ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 19th day of September, 2022, by the City of Montclair, hereinafter referred to as the "**CITY**," and University Enterprises Corporation at CSUSB, hereinafter referred to as "**UEC**", for itself and on behalf of Inland Empire Small Business Development Center, hereinafter referred to as the "**IESBDC**."

1. RECITALS

a. The parties hereto agree that it is the best interest of the **CITY** and the **UEC** to provide business-related technical assistance to residents and business owners within the **CITY** and the **UEC** through an Agreement renewed annually by the close of each current fiscal year.

b. The parties hereto agree that all funding provided by the **CITY** for this venture will be expended to fulfill a public purpose, that is economic development, and that periodic auditing will be performed in order to assure that the funds provided by the **CITY** will be utilized only for public purposes as set forth herein.

2. AGREEMENT

a. NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties here to agree as follows:

ARTICLE 1 - RECITALS

The parties acknowledge and agree that above state recitals are true and correct and incorporated herein by reference.

ARTICLE 2 - SERVICES

The **IESBDC** desires to engage in economic development efforts for the **CITY** which shall include, but are not limited to, the following:

- a. Provide technical assistance related to business planning, loan proposals, finance, bookkeeping, taxes and licenses, marketing, management, human resources, and government procurement procedures.
- b. Provide business seminars and workshops to residents and businesses.
- c. Monitor and aid in the retention, expansion and development of existing businesses.

- d. Advise and counsel businesses about business plan development, start-up requirements, business management, and expansion strategies.
- e. Advise and counsel businesses related to marketing, advertising, financial analysis, and human resources management.
- f. Advise and counsel businesses related to government procurements, funding sources, resources referrals, patents, trademarks, and copyrights.
- g. Advise and counsel businesses related to loan applications, buying and selling a business, franchising, and social media and internet marketing.
- h. Provide for the support and nurturing of businesses and the development of an entrepreneurial environment through cooperation with other local, county, state, and federal economic development organizations.

ARTICLE 3 – PLACE OF WORK

It is understood that the **IESBDC** will administer services largely at 5060 N Montclair Plaza Lane, Montclair, California 91763; although the **IESBDC** will, on request, come to City Hall or such other places as designated by the **CITY** to meet with **CITY**'s representatives.

ARTICLE 4 – PAYMENT

The **CITY** will pay the **UEC** the total sum of \$25,000 annually payable in equal quarterly payments of \$6,250 on or before the 30th day of the beginning of each quarter.

ARTICLE 5 – REPORTING

- a. The **UEC** will submit and present to the **CITY** annually a receipt and expenditure report on the use of **CITY** funds.

ARTICLE 6 – RELATIONSHIP OF PARTIES

- a. The **UEC** is an independent entity and not a department, agency or subdivision of the **CITY**. The **CITY** and the **UEC** are two separate and autonomous entities.
- b. **UEC** 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 **UEC** shall at all times be under **UEC**'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 **UEC** or any of **UEC**'s officers, employees, or agents, except as set forth in this Agreement. **UEC** 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**. **UEC** shall not incur or have the power to incur any debt, obligation, or liability whatever against **CITY**, or bind **CITY** in any manner. No employee benefits shall be available

to UEC in connection with the performance of this Agreement. Except for the fees paid to UEC as provided in the Agreement CITY shall not pay salaries, wages, or other compensation to UEC for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to UEC for injury or sickness arising out of performing services hereunder.

- c. The CITY and the UEC acknowledge that this Agreement is not a delegation of any public function of the CITY and that neither party will play an integral part in either party's decision-making process by reason of this Agreement.

ARTICLE 7 – DURATION

- a. The initial term of this Agreement shall be for a period of one (1) year commencing September 1, 2022, and continuing through June 30, 2023; this AGREEMENT may be renewed annually.
- b. Either party may terminate this Agreement upon ninety (90) days written notice to the other party.
- c. Any notice required or allowed hereunder shall be in writing and sent by certified mail, return receipt requested, or in person with proof of delivery, to the address first listed above, or such other addresses as either party shall have specified by written notice to the other party delivered in accordance herewith.

ARTICLE 8 – NONDISCRIMINATION

- a. The UEC shall not discriminate against any employee or person served under this Agreement on account of race, color, sex, age, religion, ancestry, national origin, handicap, or marital status or as otherwise prohibited by applicable law.

ARTICLE 9 – MISCELLANEOUS

- a. The UEC acknowledges that the CITY, during any fiscal year, shall not expend money, incur any liability, or enter into any agreement which, by its terms, involves the expenditure of money in excess of the amounts budgeted or the reduction of revenues for those budgeted agreements that may be available for expenditure during such fiscal year. Any agreement, verbal or written, made in violation of this subsection is null and void; and no money may be paid on such agreement. Nothing herein contained shall prevent the making of agreement for a period of exceeding one year, but any agreement so made shall be executed only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the CITY's performance and obligation to pay under this Agreement is contingent upon annual appropriation.
- b. The UEC shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state, and

local laws.

- c. The **UEC** shall at all times maintain its status as a private not-for-profit corporation, organized and created under the laws of the State of California.
- d. This Agreement may be modified or amended by mutual written agreement of the parties, duly executed by both parties.
- e. This Agreement contains all the terms and conditions agreed upon by the parties.
- f. This Agreement shall be governed and construed in accordance with the laws of the State of California. The venue of any legal action to enforce or interpret this Agreement shall be in San Bernardino County, California.
- g. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.
- h. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- i. If any party seeks to enforce or interpret this Agreement through litigation, each party shall bear its own attorney's fees and costs incurred.
- j. Each person executing this Agreement warrants that he or she has the authority to so execute this Agreement and that no further approval of any kind is necessary to bind the parties hereto.
- k. The **UEC** 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 **UEC** 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 **UEC** to comply with this Section.
- l. 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 economic development activities during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or subagreement, or the proceeds thereof, for work to be performed in connection with the activities performed under this Agreement.
- m. **UEC** agrees to defend, indemnify, and hold harmless the **CITY**, its officers, employees, agents, and volunteers from any and all liabilities for injury to persons and damage to property arising out of any act or omission of **UEC**, its officers, employees, agents, or volunteers in connection with **UEC's** performance of its obligations under this Agreement. **UEC** shall not be liable for any acts or omissions of **CITY**, its officers, employees, agents and volunteers.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written.

"CITY"

City of Montclair
5111 Benito Street
Montclair, CA 91763
(909) 626-8571

"UEC"

University Enterprises Corporation
California State University, San Bernardino
5500 University Parkway
San Bernardino, CA 92407

By: _____
Javier John Dutrey
Mayor

By: _____
Diane Trujillo, MPA
Sponsored Programs
Administration Director

Date: _____

Date: _____

ATTEST:

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	PER825
SECTION:	CONSENT - AGREEMENTS	DEPT.:	ADMIN. SVCS.
ITEM NO.:	6	PREPARER:	M.RICHTER
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-96 WITH THE INTERNATIONAL LANGUAGE SCHOOL FOR CHILDREN & ADULTS (ILSCA) FOR LANGUAGE TESTING SERVICES		

REASON FOR CONSIDERATION: The City Council is requested to consider approval of proposed Agreement No. 22-96 with the International Language School for Children & Adults for language testing services, a copy of which is attached for the City Council's review and consideration.

BACKGROUND: The City has a bilingual pay program for qualifying employees who complete their probation period and/or an oral and written examination. Any positions for which the recruitment specifies bilinguality as a requirement would also necessitate a language assessment for the chosen candidate.

The International Language School for Children & Adults (ILSCA) is a local language school that operates at Pitzer College in Claremont, providing language courses to children, high school students, and adults in the Inland Empire and Los Angeles area. The language courses and assessments offered include Spanish, Chinese, Japanese, German, Italian, French, Portuguese, American Sign Language, and English.

ILSCA may provide a live audio interpretation assessment at ILSCA, and/or a written assessment administered at City Hall through the Personnel Division. Completed exams would be submitted to ILSCA for scoring.

FISCAL IMPACT: The fiscal impact would be minimal because this service will likely be rarely used. The live audio interpretation assessment will cost \$60, and the written assessment will cost \$90 per candidate. Funds to cover the cost of this service are included in the Personnel/Risk Management, Personnel Testing section of the Administrative Services Department Budget for Fiscal Year 2022-23.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-96 with ILSCA for language testing services.

International Language School For Children & Adults Language Testing Agreement

This Language Testing Agreement is effective as of September 20, 2022, by and between **City of Montclair**, having an address of 5111 Benito Street, Montclair, CA 91763 (Customer) and **International Language School For Children & Adults**, having an address of 1050 North Mills Avenue, Claremont, CA 91711 (ILSCA). ILSCA and collectively with Customer, is the “Party” or “Parties”.

Customer has requested that ILSCA provides certain services for the Customer related to language testing and ILSCA desires to provide these services, subject to the term and conditions set below.

- 1. Services to be Provided** – ILSCA will provide Customer with any language testing Service(s) as set forth in Exhibit A. Exhibit A is attached and incorporated into this Agreement by reference. It is understood that Customer will determine the services to be provided and will request the services when necessary. The term “**Services**” in this Agreement means all the services described in Exhibit A.
- 2. Fees and Billing Procedures** – Customer shall pay ILSCA for Services rendered no later than thirty (30) days after receipt of an invoice from ILSCA. Fees are described in Exhibit B. In the event either Customer or ILSCA terminates this Agreement in accordance with Section 3 below, ILSCA shall be entitled to the service fees and all other fees, charges and expenses incurred or accrued up to the date that the termination is effective.
- 3. Term and Termination** – The term of this Agreement shall be one year from the Effective Date and shall be automatically renewed for additional one-year terms unless terminated for any reason or no reason upon thirty (30) days’ notice by either the Customer or ILSCA. In the event of termination, this Agreement will continue to govern the Customer and ILSCA rights and obligations with respect to Services performed prior to termination. Customer may continue to request, and ILSCA shall continue to provide, Services during the period after receipt of the notice of terminating and prior to the Termination Date. During such period between the notice and the Termination Date, the Customer and ILSCA shall comply with all duties and obligations in this Agreement with respect to the Services to be provided by ILSCA prior to the Termination Date. After the Termination Date, the Customer and ILSCA shall have no further rights or obligations under this Agreement. Within thirty (30) days following the Termination Date, ILSCA shall invoice Customer for all outstanding Service Fees and other fees, charges and expenses incurred prior to the Termination Date. Notwithstanding the foregoing, upon the material breach of this Agreement by either the Customer or ILSCA, the other party may terminate this Agreement in writing to be effective immediately.



4. **Relationship of the Parties** – In performing the responsibilities hereunder, ILSCA is acting as an independent contractor, and nothing contained herein shall be construed to create a partnership, agency, joint venture, or employer/employee relationship between the Customer and ILSCA. ILSCA will be solely responsible for all employment and income taxes with respect to its compensation. Neither Customer or ILSCA has the authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other Party or to bind such other Party in any way. Each Party shall be responsible for its own social security, withholding, and other applicable tax obligations.

5. **Indemnification** – Each Party (the “indemnifying Party”) hereby agrees to save, defend, indemnify and hold harmless the other party and its officers, directors, employees, consultants and agents (each an “indemnified Party”) from and against any and all losses, damages, liabilities, expenses and costs, including reasonable legal expense and attorneys’ fees (“Losses”), to which the Indemnified Party may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such Losses arise directly or indirectly out of activities performed by the Indemnifying Party pursuant to this Agreement, except to the extent such Losses result from the gross negligence or willful misconduct of any Indemnified Party. In the event an Indemnified Party seeks indemnification under this Section 5, it shall inform the Indemnifying Party of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit the Indemnifying Party to assume direction and control of the defense of the claim (including the right to settle the claim solely for monetary consideration), and shall cooperate as requested (at the expense of the Indemnifying Party) in the defense of the claim.

6. **Limitation of Liability** – ILSCA shall not be liable for any indirect, special, punitive, or consequential damages which arise under or relate to this Agreement, including but not limited to lost profits. ILSCA’s aggregate liability under this Agreement shall be limited to the amount of fees paid by Customer hereunder. The Services are provided AS IS, without warranty.

7. **Confidential Information** – ILSCA acknowledges that any and all proprietary information supplied to ILSCA by or on behalf of Customer shall be treated as confidential and shall not be disclosed to any third party for any purpose except in connection with the provision of the Services provided hereunder. ILSCA shall take appropriate actions by instruction or agreement with each of its employees, contractors, agents and representatives to keep such information confidential.

8. **Entire Agreement; Modification** – This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other negotiations and agreements, written or verbal, between the Parties relating to the matters contemplated hereby. This Agreement may not be amended, waived or changed except by written agreement signed by both ILSCA and Customer.



9. **Price Adjustments** – ILSCA shall have the right to increase the prices charged for the Services to reflect any change in the costs incurred to deliver such Services. ILSCA shall use its reasonable efforts to prevent any such cost increment from occurring. In the event that ILSCA seeks to increase the prices charged for the Services, ILSCA shall provide written notice to Customer at least three (3) months prior to such rise becoming effective.

10. **Notices** – All notices required or permitted under this Agreement shall be in writing and shall be deemed to have been duly give, made and received only when personally delivered, or one (1) day following the day when deposited with a commercially respected overnight delivery service such as Federal Express, or three (3) days following the day when deposited in the United State mails, to the following addresses:

If to ILSCA:

ILSCA
1050 North Mills Avenue
Claremont, CA 91711

If to Customer:

City of Montclair
5111 Benito Street
Montclair, CA 91763

11. **Waiver** – No failure or delay by any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof and any written waiver in one or more instances shall not be deemed to be a further or continuing waiver of any such right, power or privilege.

12. **Successors and Assigns** – Subject to the immediately succeeding sentence, this Agreement shall inure to the benefit of and be binding upon the Parties and their successors and assigns. Neither ILSCA nor Customer may assign or otherwise transfer its interest hereunder without the prior written consent of the other Party.

13. **Severability** – If any provision of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement, which shall remain in full force and effect, and the Parties hereto shall continue to be bound thereby.

14. **Headings** – The section headings in this Agreement are for conveniences only; they form no part of this Agreement and shall not affect its interpretation.

15. **Governing Law** – This Agreement shall be construed, and its validity determined by the laws of the State of California. Any suits, claims or cause of action arising from this Agreement shall be brought in a court in San Bernardino County, California and all objections to venue and personal jurisdiction in such forum are waived. Should any litigation, including appellate proceedings, be required by ILSCA to obtain payment of the Service Fee or any other fees or expenses provided for herein, Customer shall be obligated to pay ILSCA's reasonable attorneys' fees actually incurred, interest, and other costs incident to collection if ILSCA is determined to be the prevailing party.



16. **Counterparts** – This Agreement may be executed in separate counterparts. Scanned copies of this Agreement and any signature hereon shall for all purposes be considered as originals.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

ACCEPTED AND AGREED TO BY:

CITY OF MONTCLAIR

INTERNATIONAL LANGUAGE SCHOOL FOR CHILDREN AND ADULTS

Name (Print): Javier John Dutrey

Name (Print): _____

Title: Mayor

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

ATTEST

Name (Print): Andrea M. Myrick

Title: City Clerk

Signature: _____

Date: _____



EXHIBIT A

Language Testing Services

LIVE AUDIO INTERPRETATION ASSESSMENT: ILSCA shall provide interpretation assessments for individuals identified by Customer in the language(s) specified by Customer and offered by ILSCA.

- A) Customer will arrange for the language evaluation testing date and times with ILSCA. ILSCA's office hours are Monday through Friday, from 9 a.m. PT to 6 p.m. PT.
- B) Customer may change the schedule for the testing, without penalty, up to 6 p.m. PT on the business day (i.e., Monday through Friday) prior to the test.
- C) ILSCA will provide a 15-minute period for each candidate to appear for his or her scheduled language evaluation test. Candidates are free to call in 5 minutes prior to and 10 minutes following the scheduled start time of their test. If candidate fails to appear by the 10-minute additional time period, Customer will be charged for the testing as if it had taken place and will be required to reschedule such candidate's evaluation testing if it so desires.
- D) ILSCA will score each candidate's performance according to specified grading criteria.
- E) The results of all evaluations will be submitted by ILSCA to Customer's administrative contact by email.
- F) ILSCA will not discuss the testing results with the testing candidate.

PAPER WRITING ASSESSMENT: ILSCA shall provide paper writing and/or translation assessments for individuals identified by Customer in the language(s) specified by Customer and offered by ILSCA.

- A) Customer will assign the test in person at their location.
- B) Customer will submit completed exams back to ILSCA through email.
- C) ILSCA will score each candidate's performance according to specified grading criteria.
- D) The results of all evaluations will be submitted by ILSCA to Customer's administrative contact by email.
- E) ILSCA will not discuss the testing results with the testing candidate.



EXHIBIT B

Testing Item	Cost
Oral Assessment	\$60*
Written Assessment	\$90

*Cancellation Policy for Oral Assessment Testing: Cancellations can be done at no charge by contacting ILSCA by 6 p.m. PT on the business day before the test. Later cancellations will be charged the full amount. Tests scheduled on the same day cannot be cancelled.



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 19, 2022 **FILE I.D.:** CAT025
SECTION: CONSENT - AGREEMENTS **DEPT.:** CITY MGR.
ITEM NO.: 7 **PREPARER:** E. STARR

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-97, AMENDMENT NO. 3 TO AGREEMENT NO. 95-73, AS AMENDED, WITH DIANE E. ROBBINS OF ROBBINS & HOLDAWAY, A PROFESSIONAL CORPORATION, TO CONTINUE PROVIDING LEGAL SERVICES TO THE CITY OF MONTCLAIR, MONTCLAIR SUCCESSOR REDEVELOPMENT AGENCY, MONTCLAIR HOUSING CORPORATION, MONTCLAIR HOUSING AUTHORITY AND OTHER CITY-RELATED LEGAL ENTITIES

REASON FOR CONSIDERATION: The Montclair City Council, City Council acting as Successor to the Montclair Redevelopment Agency Board of Directors, Montclair Housing Corporation Board of Directors, Montclair Housing Authority Commissioners and other City-related legal entities (hereafter collectively the “Agency”) are requested to consider approval of Agreement No. 22-97 (Amendment No. 3 to Agreement No. 95-73) with Diane E. Robbins of the law firm Robbins & Holdaway, a Professional Corporation (hereafter the “Attorney”), to continue to provide professional services to the Agency.

BACKGROUND: Diane E. Robbins has provided City Attorney legal services to the Agency since December 1995. Those services are covered by Agreement No. 95-73, as amended by Agreement No. 03-19 (Amendment No. 1) and Agreement No. 17-13 (Amendment No. 2).

Proposed Agreement No. 22-97 provides for the following revisions:

1. Change to Retainer Fee. An increase in the current retainer fee from \$6,400 per month to \$8,000 per month. The retainer fee is PERSable—reportable as pay to the California Public Employee Retirement System (CalPERS) for calculation into pension benefits.
2. Change to hourly rate for hours billable to the Retainer Fee. Retention of forty (40) hours of professional legal services, billable under the \$8,000 per month retainer fee, at a rate of \$200 per hour—representing an increase from the current hourly rate of \$160.
3. Change to hourly rate for hours billable above the retainer fee. Professional services above the forty (40) hours included under the monthly retainer fee would be billed at a rate of \$250 per hour—an increase from the current hourly rate of \$210. Payments for professional services above the \$8,000 per month retainer fee are not PERSable.
4. Change to hourly rate for Special Counsel services. Special counsel services, currently billed at \$260 per hour, would be billed at a rate of \$300 per hour. Special Counsel services are not PERSable.
5. Other terms and conditions. All other terms and conditions remain unchanged.

FISCAL IMPACT: Provisions of Agreement No. 22-97 would be effective October 1, 2022, and would result in the following fiscal impacts:

1. Annual retainer fee. The annual retainer fee would increase from \$76,800 to \$96,000. The \$96,000 is PERSable.
2. Hourly rate above the retainer fee. Based on an average of 67 billable hours monthly, or 804 billable hours annually, the 324 annual billable hours above the 480 annual retainer hours, billed at a rate of \$250 per hour, would be \$81,000 annually; versus \$68,040 annually under the current, billable hourly rate of \$210 per hour.
3. Special Counsel hourly rate. Special counsel services, currently billed at \$260 per hour, would be billed at a rate of \$300 per hour. Annual costs for Special Counsel are indeterminate, and are based on agency needs in relation to services requiring special counsel services related to the incumbent's specialty in areas that include redevelopment, affordable housing, and economic development.

For purposes of comparison, the hourly rate for several law firms representing the City in areas of specialize needs are as follows (these comparisons may vary based on the associate/partnership status of an attorney within each of the subject firms):

- Atkinson, Andelson, Loya, Ruud & Romo - \$325 per hour
- Bordin Semmer - \$235 per hour
- Colantuono, Highsmith & Whatley - \$395 per hour
- Richards, Watson & Gershon - \$395 per hour
- Zappia Law Firm - \$275 per hour

The City Manager incorporated into the Fiscal Year 2022-23 General Fund Budget anticipated increases in the City Attorney's retainer fee and hourly billable rate.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-97, Amendment No. 3 to Agreement No. 95-73, as amended, with Diane E. Robbins of Robbins & Holdaway, a Professional Corporation, to continue providing legal services to City of Montclair, Montclair Successor Redevelopment Agency, Montclair Housing Corporation, Montclair Housing Authority and other City-related legal entities.

AGREEMENT NO. 22-97 (AMENDMENT NO. 3)
FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into this 20th day of September, 2022, by and between the CITY OF MONTCLAIR, a municipal corporation (hereinafter the “CITY”); the SUCCESSOR REDEVELOPMENT AGENCY, MONTCLAIR HOUSING AUTHORITY, MONTCLAIR HOUSING CORPORATION, and other City-related legal entities (hereinafter collectively the “AGENCY”); and DIANE E. ROBBINS of the firm Robbins and Holdaway, a professional corporation (hereinafter the “ATTORNEY”).

WITNESSETH:

WHEREAS, ATTORNEY has been acting as City Attorney for City and as Counsel for Agency since December, 1995;

WHEREAS, Agreement No. 95-73, as amended by Agreements No. 03-19 (Amendment No. 1) and 17-13 (Amendment No. 2), currently sets forth the Agreement for Legal Services between ATTORNEY and CITY/AGENCY; and

WHEREAS, ATTORNEY, CITY and AGENCY desire to update the existing Agreement for Legal Services to increase the Retainer and to provide for special counsel service to be provided by attorney Mark J. Huebsch;

NOW, THEREFORE, BE IT MUTUALLY AGREED as follows:

1. TERM: The Term of this Agreement shall be continuous, without any specified period. CITY and AGENCY may terminate this Agreement at any time. ATTORNEY

may terminate this Agreement upon the giving of thirty (30) days' notice, in writing, to the CITY and AGENCY.

2. COMPENSATION:

A. For a retainer fee of Eight Thousand Dollars (\$8,000) per month, ATTORNEY agrees to provide forty (40) hours of billable time at the hourly rate of \$200.00 per hour relating to the following matters:

(i) Attend two (2) regular City Council meetings, designated City Council subcommittees, and two (2) regular Planning Commission meetings, together in their entirety, per month, for the purpose of giving the City Council, and the Planning Commission members any legal advice as may be required during such meetings.

(ii) Perform those services and duties as set forth on Exhibit "A" attached hereto.

B. For any hours in excess of forty hours per month as set forth in paragraph 2.A. above, ATTORNEY shall be compensated at the hourly rate of \$250.00 per hour. Notwithstanding the foregoing, for special counsel service rendered to CITY/AGENCY by Mark J. Huebsch, of the firm Robbins & Holdaway, ATTORNEY shall be compensated at the hourly rate of \$300.00 per hour for all hours of special counsel service, subject to provisions of Section C of this Agreement.

C. ATTORNEY will charge CITY/AGENCY for photocopies (\$.20 per page), mailing fees, messenger services, computer database (e.g. Westlaw) searches (billed at vendor's standard rate), and reimbursement for court costs, process server fees, and other similar third party fees. A detailed description of the work performed and the costs and expenses advanced by ATTORNEY will be prepared on a monthly basis as of the last day of the month. Hourly rate services will be charged to CITY/AGENCY at a minimum increment of one-tenth hour, including

reasonable travel time billed portal-to-portal. When time spent by ATTORNEY on a particular service exceeds one-tenth hour, the charge will be rounded up to the next one-tenth hour increment.

3. BENEFITS: The City shall continue to provide ATTORNEY with the following benefits as provided for department heads in the Executive Management Agreement: health (medical, dental, and optical) insurance coverage, life and accidental death and dismemberment insurance, deferred compensation, and continued coverage in the California Public Employee Retirement System (CalPERS). ATTORNEY shall continue to pay eight percent (8%) of the CalPERS employee/member rate, and CITY shall pay any remaining balance of the employee rate.

4. ASSOCIATE: ATTORNEY agrees that her associates, Richard E. Holdaway and Mark J. Huebsch, of the firm Robbins and Holdaway, a professional corporation, will be available to provide the legal services at the compensation called for herein if, or whenever, ATTORNEY is not available. Richard E. Holdaway shall serve as Deputy City Attorney; provided however, neither Richard E. Holdaway or Mark J. Huebsch shall be eligible for BENEFITS defined in “Section 3” of this AGREEMENT.

5. MISCELLANEOUS: ATTORNEY maintains errors and omissions insurance coverage applicable to the services to be rendered.

6. EFFECTIVE DATE: This Agreement shall become effective as of October 1, 2022.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, this Agreement has been executed this 20th, day of September, 2022, at Montclair, California.

CITY / AGENCY:

Date: _____

By: _____

JAVIER "JOHN" DUTREY
Mayor / Chairman

ATTEST:

Date: _____

By: _____

ANDREA M. MYRICK,
City Clerk / Agency Secretary

ATTORNEY:

Date: _____

DIANE E. ROBBINS
Robbins and Holdaway
a professional corporation

EXHIBIT “A”

ATTORNEY SERVICES

Except as provided elsewhere in this Agreement, ATTORNEY shall provide, in a professional manner, all of the usual, customary and necessary services normally provided by a City Attorney to a CITY and to AGENCY, as those services are required. The scope of services to be provided shall include the following:

1. Serve as retained counsel for the City Council, Planning Commission, Successor Redevelopment Agency, Successor Housing Authority, Housing Corporation, and other City-related legal entities; advise the governing board and staff on legal matters.
2. Represent the City in administrative law and civil court actions.
3. Recommend counsel representation for cases requiring specialized legal assistance; confer with other legal counsel on matters of litigation; coordinate City Prosecutor Program; and monitor activities of any Special Counsel retained by City.
4. Review ordinances, agreements, resolutions, and all legal documents as to form.
5. Draft legal documents as required.
6. Attend City Council and Planning Commission meetings as staff counsel; attend other meetings and provide legal representation as required.
7. Review claims against the City; recommend appropriate courses of action.
8. Advise City Council and staff on pending litigation.
9. Ensure compliance with open-meeting requirements.
10. Advise on Workers’ Compensation issues.
11. Advise on disciplinary actions.
12. Advise on disability retirement issues.
13. Deputy City Attorney Serves as staff counsel at Planning Commission meetings.

14. Deputy City Attorney serves in the absence of the City Attorney.
15. Advise on compliance with the State Elections Code and Federal and State Voting Rights Acts.
16. Advise on conflict of interest issues.



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	PTD175
SECTION:	CONSENT - AGREEMENTS	DEPT.:	POLICE
ITEM NO.:	8	PREPARER:	B. KUMANSKI
SUBJECT:	CONSIDER APPROVAL OF AGREEMENT NO. 22-100 WITH THE SAN BERNARDINO COUNTY DISTRICT ATTORNEY'S OFFICE TO STATION A VICTIM'S ADVOCATE AT THE POLICE DEPARTMENT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY		

REASON FOR CONSIDERATION: To improve the health, welfare, and quality of life of victims of crime, including children, the San Bernardino County District Attorney's Office has Victim Advocates stationed throughout the County at various allied agencies. Having a Victim Advocate on site is advantageous to the Police Department and would allow for victim services to be readily accessible to the City's residents more conveniently. City Council is requested to consider approval of Agreement No. 22-100 with San Bernardino County, District Attorney's Office to provide a Victim Advocate to be stationed at the Police Department.

A copy of proposed Agreement No. 22-100 is attached for the City Council's review and consideration.

BACKGROUND: The State of California, by and through Assembly Bill 109 establishing the California Public Safety Realignment Act of 2011, permits a San Bernardino County Victim Advocate (Advocate) to be stationed in a non-County agency or organization in order to provide Victim Advocacy Services to improve the health, welfare, and quality of life of victims of crime, including children. The San Bernardino County District Attorney's Office would like to assign a Victim Advocate at the Montclair Police Department to better reach crime victims within the City. Victim Advocates provide needed resources to crime victims including access to counseling, legal services, restitution, and information to help navigate the legal system.

The proposed agreement would allow for a Victim Advocate to be stationed at the Police Department and readily available to provide services to victims within the community. Being attached to the Department, they would have immediate access to victims and receive notifications in a more timely fashion. This program is funded by the County, and there are no financial requirements by the City. The term requested by the County is through the end of the current fiscal year, and will renew each fiscal year if funding is available. Any facility requirements for the agreement are already in place at the Police Department, and there would be no maintenance except for the initial workspace set-up.

FISCAL IMPACT: If authorized by the City Council, there is no funding requirement for Agreement No. 22-100.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-100 with the San Bernardino County District Attorney's Office to station a Victim Advocate at the Police Department.



Contract Number

SAP Number

Agreement No. 22-100

District Attorney

Department Contract Representative	<u>Claudia Walker</u>
Telephone Number	<u>(909) 382-3669</u>

Contractor	<u>City of Montclair</u>
Contractor Representative	<u>Lieutenant Brandon Kumanski</u>
Telephone Number	<u>(909) 448-3605</u>
Contract Term	<u>October 25, 2022-June 30, 2023</u>
Original Contract Amount	<u>Non-financial</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>N/A</u>
Cost Center	<u>4502101000</u>

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the State of California, by and through Assembly Bill 109 which establishes The California Public Safety Realignment Act of 2011, permits a San Bernardino County Victim Advocate (Advocate) to be stationed in a non-County agency or organization in order to provide Victim Advocacy Services to improve the health, welfare, and quality of life of victims of crime, including children; and

WHEREAS, the City of Montclair (City) desires to have an Advocate assigned to the Montclair Police Department (MPD) for the purpose of providing Victim Advocacy services, located at 4870 Arrow Hwy, Montclair, CA 91763, and

WHEREAS, San Bernardino County (County) is willing to provide an Advocate to perform these services, and the parties are willing to enter into a non-financial agreement as set forth below;

NOW, THEREFORE, the County and City mutually agree to the following terms and conditions:

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ATTACHMENTS

ATTACHMENT A – VICTIM ADVOCATE SERVICES

I. DEFINITIONS

- A. MPD** – Montclair Police Department and the City of Montclair. The City of Montclair is the entity with the legal authority to enter into an agreement for Montclair Police Department. All legally binding provisions in this agreement, attributed to MPD, shall be legally binding on the City of Montclair and the Montclair Police Department.
- B. Victim Advocate** – staff from San Bernardino County District Attorney’s Office (Bureau of Victim Services) who will be assigned to provide victim advocate services.

II. MPD RESPONSIBILITIES

MPD shall:

- A. Provide adequate office space, Internet connectivity, the ability to print to a duplex-capable printer, equipment, supplies, and office assistance for each Advocate as outlined below. Where County finds that the facilities, equipment, supplies, and/or MPD office assistance are inadequate, the County will provide the City with notice and provide the City with reasonable time to cure.
1. Adequate office space includes, but is not limited to, a dedicated, secure private interviewing/work area of at least 110 square footage to safely contain all the equipment and supplies, as well as the Advocate and two (2) other adults. There should also be a client waiting area separate from the interviewing/work area.
 2. Provide adequate and secure internet connectivity to allow wireless access from the Advocate’s computer (provided by the District Attorney) to the District Attorney’s network. If MPD requires that the Advocate electronically enter notes or services provided into MPD’s case management system, MPD will obtain prior approval from the Chief or Assistant Chief of Victim Services, provide a computer for the Advocate, and provide training to the Advocate on the network and/or case management system. MPD and the District Attorney will maintain separate computer systems such that the computer issued to the Advocate by the District Attorney’s office will only be used to access the District Attorney network and systems and any computer issued by MPD will only be used to access MPD’s network and systems.
 3. Adequate office assistance includes, but is not limited to, answering the phone and taking messages when Advocate(s) are not present or providing a phone with voice mail capabilities.
- B. Ensure MPD staff receives adequate instruction on applicable confidentiality regulations to protect/maintain the confidentiality of all applicants and recipients.
- C. Ensure MPD employees make no attempt to exercise any control or supervision over County staff or to influence County staff regarding any client or case action.
- D. Contact the Chief of Victim Services or her designee with any concerns and/or suggestions for overcoming problem areas and/or changing procedures. The Chief of Victim Services will ensure consistency with County policies and procedures is maintained.
- E. Provide County with three (3) copies of the applicable federal/state and MPD rules and regulations and provide training on police department policies and procedures, including but not limited to policies governing the receipt and use of confidential information, which may be applicable to the Advocate’s job duties. Any exchange of confidential information shall only be used to enable the provision of services under this agreement and for the purposes expressly allowed by law.
- F. Provide County with a sixty (60) day prior written notice and justification of MPD’s desire to increase or decrease the number of Advocate staff/hours.
- G. Understand and agree that County may or may not meet the amount of assigned Advocate time and/or staff requested based on limitations of County resources and personnel and County’s ability to fill these positions.

- H. Not hold County responsible, financially or otherwise, for any action taken by the State, which would require the removal of the Advocate staff from MPD or termination of this contract in part, or whole.
- I. Ensure a safe working environment to the extent reasonably possible for Advocate staff.

III. MPD GENERAL RESPONSIBILITIES

- A. In the performance of this Contract, MPD, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of San Bernardino County. Further, in the performance of this contract Advocate shall not be deemed to be an officer, employee, or agent of the City of Montclair. MPD agrees to comply with the applicable federal suspension and debarment regulations, including, but not limited to Federal Executive Order 12549 (51 FR 6370). By signing this Contract, MPD certifies that:
 - 1. Neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department;
 - 2. Have not within a three-year period preceding this Contract been convicted of or had a judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; or a violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph (A)(2) herein; and
 - 4. Have not within a three-year period preceding this Contract had one (1) or more public transactions (Federal, State or local) terminated for cause or default.
- B. MPD shall not be identified as suspended or debarred on the federal System for Award Management's (SAM) excluded list. If at any time during the term of this Contract, the County determines MPD is identified as either suspended or debarred on the SAM, MPD shall be considered in material breach of this Contract, and the County may result in immediate termination of this Contract
- C. Without the prior written consent of the District Attorney or his/her designee, this Contract is not assignable by MPD either in whole or in part.
- D. MPD agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent MPD. 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 MPD. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, Chief Executive Officer of the County 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.
- E. If during the course of the administration of this Contract, the County determines that the MPD 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.
- F. MPD agrees not to enter into any subcontracts for work contemplated under this Contract without first obtaining written approval from the District Attorney or his/her designee. Any subcontractor shall be

subject to the same provisions as MPD. MPD shall be fully responsible for the performance of any subcontractor.

- G. MPD shall notify County in writing of any change in mailing address and/or physical location within ten (10) days of the change, and shall immediately notify County of changes in telephone or fax numbers.
- H. MPD shall designate an individual to serve as the primary point of contact for the Contract. Contractor shall notify the County when the primary contact will be unavailable/out of the office for one (1) or more workdays. MPD or designee must respond to County inquiries within two (2) County business days.
- I. MPD shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. The MPD shall not use or disclose any identifying information for any other purpose other than carrying out the MPD's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.
- J. Indemnity and Insurance – The MPD and the County agree to and shall comply with the following indemnification and insurance requirements:

- 1. Indemnification – The MPD agrees to indemnify, defend (with counsel reasonably approved by the 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 the performance of this Contract by MPD but only to the extent such claims, actions, losses, damages, and/or liability are caused by or result from the negligence or intentional acts or omissions of the MPD, its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

The County agrees to indemnify, defend (with counsel reasonably approved by the MPD) and hold harmless the MPD and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of the performance of this Contract by County but only to the extent such claims, actions, losses, damages, and/or liability are caused by or result from the negligence or intentional acts or omissions of the County, its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

In the event that the County and/or the MPD are determined to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this agreement, the County and/or the MPD shall indemnify the other to the extent of its comparative fault.

- 2. Insurance Self-Insured – The MPD and County are self-insured for purposes of professional liability, general liability, and Workers' Compensation, the self-insured MPD and County each warrants that through its program of self-insurance, it has adequate professional liability, general liability and Workers' Compensation to provide coverage for liabilities arising out of MPD's or County's performance of this Contract.
- K. MPD shall comply with all applicable laws, statutes, ordinances, administrative orders, rules or regulations relating to its duties, obligations and performance under the terms of the Contract and shall procure all licenses and pay all fees and other charges required thereby. MPD shall maintain all required licenses during the term of this Contract. Failure to comply with the provisions of this section may result in immediate termination of this Contract.
- L. MPD shall comply with all applicable local health and safety clearances, including fire clearances, for each site where services are provided under the terms of this Contract.
- M. 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.

- N. MPD agrees that any news releases, advertisements, public announcements or photographs arising out of the Contract or MPD's relationship with County shall not be made or used without prior written approval of the Public Affairs Officer of the District Attorney Department or his or her designee.

IV. COUNTY RESPONSIBILITIES

County shall:

- A. Provide the Victim Advocate Services set forth in Attachment A to this Contract.
- B. Provide the Advocate a computer and office furniture in a designated office at MPD.
- C. Make a good faith effort to employ and train the number of Advocates required to handle the workload for MPD.
- C. Schedule the Advocate(s) at MPD on weekdays only (Monday through Friday). Advocate(s) shall not be available on weekends, evenings, nights, County holidays, or 9/80 off days except if there is an incident of mass violence. Advocate(s) shall not work in excess of eighty hours during a two-week pay period.
- D. Be under no obligation to provide replacement Advocate(s) in the event an assigned Advocate is temporarily absent for any reason. County shall make a good faith effort to provide coverage of MPD during planned and unplanned absences within the limitations of County resources and personnel.
- E. Maintain sole authority and responsibility for the assignment and/or reassignment of all County staff, including assignment and tasks required to be completed pursuant to this Contract.
- F. Provide for supervision of the Advocate(s) by a Supervising Victim Advocate and for management by the Assistant Chief of Victim Services or the Chief of Victim Services.
- G. Have sole responsibility of supervising County staff, and MPD shall not exercise any control or supervision over County staff. Any concerns or suggestions shall be taken to the Supervising Victim Advocate or the staff designated by the Chief or Assistant Chief of Victim Services. This paragraph does not preclude MPD staff from consulting with the Advocate regarding any victim or case action.
- H. Review the applicable MPD rules and regulations provided to County by MPD. MPD is to provide to County any rules or regulations that are in writing and not already covered by this Contract.

County will assure that Advocate(s) assigned to MPD conform to the reasonable rules and regulations of MPD which are not in conflict with County rules and regulations and which are applicable to MPD employees.
- I. Maintain a log of cases taken and the disposition of cases, for County and MPD purposes.
- J. Provide MPD with information to enable MPD to refer only clients who are potentially eligible for Victim Advocate services.
- K. Provide interpreters for clients when MPD interpreters are not available.
- L. Provide an appointment calendar to be used jointly by the Advocate(s) and MPD staff in setting appointments with the Advocate(s).
- M. Require Advocate(s) to refer clients who request alternative or additional services to the appropriate resource.
- N. Ensure that all clients are processed in accordance with the applicable state statutes/regulations and County policies.

V. FISCAL PROVISIONS

- A. There shall be no financial remuneration to the County provided that Federal/State funding for the Victim Advocate services is not decreased or withdrawn.

However, if the Federal/State funding for Victim Advocate services is decreased or withdrawn, MPD will choose from one of the following options:

1. Retain the Outstationed Advocate(s) at the MPD site and reimburse the County on the productive hourly rate of salary, benefits, and overhead of an Advocate to be calculated at the time the decreased/withdrawn funding occurs;

OR

2. Remove the Outstationed Advocate(s) from the MPD site and terminate the Contract.
- B. If MPD chooses to reimburse the County per Paragraph A, Item 1, above, any payments to the County shall commence within thirty (30) days of County notification to MPD. MPD shall then submit monthly payments to the County within ten (10) days following the service month. Monthly payments, along with all supporting documentation, are to be sent to:

San Bernardino County
Office of the District Attorney
Attention: Chief of Administration or Chief of Victim Services
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415

VI. TERM

This Contract is effective as of October 25, 2022 and expires June 30, 2023 in accordance with the end of the fiscal year. This Contract may be terminated earlier in accordance with provisions of Section VII of the Contract. If AB109 funding is renewed in successive years, the contract term will change to match the funding period of the given year and be renewed upon agreement and signature by MPD and San Bernardino County.

VII. EARLY TERMINATION

The County may terminate the Contract immediately under the provisions of Section III, Paragraph D, and Section VIII, Paragraph C, of the Contract. In addition, the Contract may be terminated without cause by the County or MPD by serving a written notice to either party thirty (30) days in advance of termination. The District Attorney or his designee is authorized to exercise the County's rights with respect to any termination of this Contract.

VIII. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this Contract, the notices shall be in writing and mailed to the following respective addresses listed below.

MPD: City of Montclair Police Department
Lieutenant Brandon Kumanski
4870 Arrow Highway
Montclair, CA 92335

County: San Bernardino County
Office of the District Attorney
Florida Alarcon, Chief of Victim Services
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415

- B. 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. MPD 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 any 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.

MPD shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from MPD. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

- D. No waiver of any of the provisions of the Contract shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under the Contract shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right.
- E. Any alterations, variations, modifications, or waivers of provisions of the Contract, unless specifically allowed in the Contract, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this Contract. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- F. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable or contrary to law, it shall be modified where practicable to the extent necessary so as to be enforceable (giving effect to the intention of the Parties) and the remaining provisions of the Contract shall not be affected.
- G. This Contract shall be governed by and construed in all aspects in accordance with the laws of the State of California without regard to principles of conflicts of laws. The Parties agree to the exclusive jurisdiction of the federal court located in the County of Riverside and the state court located in San Bernardino County, for any and all disputes arising under this Contract, to the exclusion of all other federal and state courts.

IX. CONCLUSION

- A. This Contract, consisting of ten (10) pages, is the full and complete document describing services to be rendered including all covenants, conditions and benefits.
- B. The signatures of the parties affixed to this Contract affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.
- C. This Contract 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 Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (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 Contract upon request

IN WITNESS WHEREOF, San Bernardino County and MPD have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

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ATTACHMENT A – VICTIM ADVOCATE SERVICES

Police Based Advocacy Program

The Victim Advocate assigned to provide services will be located within the Montclair Police Department. The Advocate will assist victims of crime who reside or work in Montclair, California. The San Bernardino County District Attorney's Office Bureau of Victim Services is committed to improving, enhancing, and expanding victim services throughout law enforcement agencies. The victim advocate will respond to crime scenes (once secured) and other locations upon request from law enforcement to provide the following advocacy services to victims and witnesses, including, but not limited to:

- Immediate crisis intervention (short-term emotional and physical care) in person or by telephone
- Crisis counseling if needed
- Emergency needs assessment for food, shelter, clothing, medical care and transportation
- Accompaniment during medical exams as requested
- Referrals to San Bernardino County, qualified professionals, or Community Based Organizations for services
 - Counselors and/or counseling agencies
 - State of California Victim Compensation claim assistance
- Orientation to the criminal justice system
- Emergency Relocation assistance, Temporary Lodging assistance
- Notifications of the status of the case(s) involving the victim
- Assistance with victim impact statement
- Travel assistance to and from Court proceedings
- Assistance with obtaining childcare during Court proceedings

Example of how services will be provided

The Victim Advocate will be well versed in the department's investigative process in order to better explain the process to victims and witnesses.

Contact with victims will be initiated through various means:

- Victim Services brochure provided by law enforcement to victim
- Telephone contact
- Police reports provided to the Victim Advocate
- At the crime scene
- Police Department walk-ins

The Victim Advocate will provide an orientation to criminal justice system and process and can provide assistance with victim impact statements, assistance in securing child care so that the victim can attend court and arrange for travel and accompaniment to court and criminal justice offices if the case is filed by the District Attorney's office.



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 19, 2022 **FILE I.D.:** PTD175
SECTION: CONSENT - AGREEMENTS **DEPT.:** POLICE
ITEM NO.: 9 **PREPARER:** B. KUMANSKI

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-103, AMENDING AGREEMENT NO. 19-103 WITH THE CITY OF WEST COVINA AND MARK 43 FOR CAD/RMS UPDATES AND SERVICES, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$10,000 EXPENDITURE FROM THE SB 509 PUBLIC SAFETY FUND FOR COSTS ASSOCIATED WITH AGREEMENT NO. 22-103

REASON FOR CONSIDERATION: In 2019, the Department updated its Computer Aided Dispatch (CAD) and Records Management System (RMS) when the existing system provided by the City of West Covina/West Covina Service Group (WCSG) deemed the prior system end-of-life and transitioned to a partnership with Mark 43 to modernize the systems. With this transition, the Department acquired the ability to enhance the capability of the system with integration to other systems already in use. Additionally, Mark 43 is capable of providing data for other services, including an upcoming agreement with San Bernardino County. City Council is requested to consider approval of Agreement No. 22-103, amending Agreement No. 19-103 with The City of West Covina and Mark 43 for these CAD/RMS updates and services.

A copy of proposed Agreement No. 22-103, amending Agreement No. 19-103, is attached for the City Council's review and consideration.

BACKGROUND: In 2019, the Department entered into an agreement with the WCSG and Mark 43 (Agreement 19-103) for CAD/RMS services. The system was modern and capable of integrating with other services not yet acquired by the Department, but which were actively being researched for implementation. These capabilities included integration with other software being sought, such as specialized collision reporting software and online reporting. The COVID-19 pandemic brought the need for online reporting to the forefront and a solution with LexisNexis, Desk Officer Reporting System (DORS) was implemented in 2020. Due to the urgency of the pandemic and Mark 43 not being ready for use yet, a phased implementation was conducted to get DORS available as quickly as possible, with the integration component being held off until Mark 43 was ready. A change-order for this service was completed with Mark 43 at the time, and no additional fees were proposed.

Additionally, the Department recently acquired Crossroads collision reporting software. This software is also able to be integrated with Mark 43, and the WCSG will facilitate this integration, also at no additional cost to the City.

Additionally, the Department will need data replication for third-party uses. Currently, the Department is in an agreement with the San Bernardino County Sheriff's Department for data sharing services, utilized under the program Coplink. This program has been the standard for all San Bernardino County law enforcement, as well as throughout the Southern California region for over a decade. This service is provided by the County at

no recurring cost to the City though various law enforcement grant funding sources. Recently, an analysis was conducted by the Sheriff's Department and the decision was made to transition the entire County from Coplink to another system. While the Sheriff's Department will continue to fund this program, the participating agencies will need to provide access to their CAD/RMS data, though a specific method called Datalake. This method replicates the data and allows for it to be used for many other systems, safe from being directly connected to our core systems. This process is needed for other systems such as various crime analysis software the Department plans to utilize for a future Crime Analyst position. The program with the Sheriff's Department is expected to begin this fiscal year. WCSG quoted the cost for the Datalake service, \$10,000 per year. This cost was requested and approved in the current fiscal year, Administration (Program 4421, Special Contract Services. The proposed agreement formally amends the original agreement to add the above mentioned integrations and service additions.

FISCAL IMPACT: If authorized by the City Council, Agreement No. 22-103, amending Agreement No. 19-103, would result in a \$10,000 expenditure from the SB 509 Public Safety Fund (1143).

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

1. Approve Agreement No. 22-103 with City of West Covina and Mark 43 for CAD/RMS updates and services, subject to any revisions deemed necessary by the City Attorney.
2. Authorize a \$10,000 expenditure from the SB 509 Public Safety Fund for costs associated with Agreement 22-103.

**AMENDMENT NO. 1 TO
MEMBER AGENCY ADMISSION AGREEMENT**

This Amendment No. 1 to the Member Agency Admission Agreement (this "Amendment"), is dated as of September 19, 2022, and is between Mark43, Inc. ("Mark43"), the City of West Covina ("West Covina"), and the City of Montclair (the "Member Agency," and collectively, the "Parties," and each, a "Party").

- A. WHEREAS, the Parties have entered into that certain Member Agency Admission Agreement, dated as of December 3, 2019 (the "Existing Agreement"); and
- B. WHEREAS, the Parties hereto desire to amend the Existing Agreement to update Schedule A, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Existing Agreement.
- 2. Amendments to the Existing Agreement. As of the Amendment Effective Date (defined below), the Existing Agreement is hereby amended or modified as follows:
 - a. Exhibit A of the Existing Agreement is hereby amended by deleting it in its entirety and replacing it with the Exhibit A attached hereto.
- 3. Date of Effectiveness; Limited Effect. This Amendment is effective as of the date first written above (the "Amendment Effective Date"). Except as expressly provided in this Amendment, all of the terms and provisions of the Existing Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Existing Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Amendment Effective Date, each reference in the Existing Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein," or words of like import, and each reference to the Existing Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Existing Agreement, will mean and be a reference to the Existing Agreement as amended by this Amendment.
- 4. Representations and Warranties. Each Party hereby represents and warrants to the other Party that:
 - a. It has the full right, power, and authority to enter into this Amendment and to perform its obligations hereunder and under the Existing Agreement as amended by this Amendment.
 - b. The execution of this Amendment by the individual whose signature is set forth at the end of this Amendment on behalf of such Party, and the delivery of this Amendment by such Party, have been duly authorized by all necessary action on the part of such Party.
 - c. This Amendment has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 5. Miscellaneous.
 - a. This Amendment and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Amendment, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of California, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California.
 - b. This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of

their respective successors and assigns.

- c. The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- d. This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- e. The Existing Agreement as modified by this Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- f. Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accountants, and legal counsel).

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 as of the date first written above.

MARK43, INC.

By: _____

Title: _____

Date: _____

CITY OF WEST COVINA

By: _____

Title: _____

Date: _____

CITY OF MONTCLAIR

By: _____

Title: Javier John Dutrey, Mayor

Date: _____

ATTEST

By: _____

Title: Andrea M. Myrick, City Clerk

Date: _____

EXHIBIT A

ADDITIONAL SERVICES

Professional Services – Deemed Included under Existing Agreement

1. Interface – Custom Level 1: Vesta ANI / ALI

Professional Services – Amendment No. 1 Addition

1. Integration – Self Build: CopLogic
2. Integration – Self Build: Crossroads

SAAS Services – Amendment No. 1 Addition

1. DLK 1: Basic



CITY COUNCIL AGENDA REPORT

DATE: SEPTEMBER 19, 2022 **FILE I.D.:** GRT050-C/STA050

SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS

ITEM NO.: 10 **PREPARER:** S. STANTON

SUBJECT: CONSIDER AMENDING THE 2019–2024 CAPITAL IMPROVEMENT PROGRAM TO ADD THE CDBG TARGET AREA ALLEY IMPROVEMENTS PROJECT

CONSIDER AUTHORIZING AN \$849,440 APPROPRIATION FROM COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS FOR COSTS RELATED TO THE CDBG TARGET AREA ALLEY IMPROVEMENTS PROJECT

CONSIDER AUTHORIZATION TO ADVERTISE FOR BID PROPOSALS FOR THE CDBG TARGET AREA ALLEY IMPROVEMENTS PROJECT

CONSIDER AUTHORIZING THE CITY MANAGER TO AWARD AGREEMENT NO. 22-104 FOR CONSTRUCTION OF THE CDBG TARGET AREA ALLEY IMPROVEMENTS PROJECT

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

With time restraints of fulfilling the February 24, 2023 expenditure deadline of the CDBG funds, staff is requesting that the City Council authorize the City Manager to award the project to the lowest, most responsive, and responsible bidder following the bid opening, the contract for which has been assigned Agreement No. 22-104.

BACKGROUND: The City currently has \$849,440 of unspent Community Development Block Grant funds. The funds continue to be used towards graffiti abatement, code enforcement, senior transportation services, and Reeder Ranch improvements. With a February 24, 2023 deadline for funding expenditures, staff has opted to transfer the remaining funds towards alley improvement projects. Funding can only be used towards alleyways located within the CDBG target areas. The City currently has 16 alleyways located within the target areas. In previous years, the City has used CDBG funding for the rehabilitation of five (5) alleyways.

The CDBG Target Area Alley Improvements Project is intended to improve pavement conditions in five separate alleyways. The five locations are:

1. **9600 Monte Vista Avenue**, located west of Monte Vista Avenue, between Monte Vista Avenue and Harvard Street.
2. **4700 San Bernardino Street**, located south of San Bernardino Street, between Helena Avenue and Monte Vista Avenue.
3. **5300 San Bernardino Alley**, located south of San Bernardino Street, between Rose Avenue and Vernon Avenue.
4. **4800 Orchard Street**, located south of Orchard Street, between Tudor Avenue and Monte Vista Avenue.
5. **10300 Amherst Avenue**, located west of Amherst Avenue between Kingsley

Street and Holt Boulevard.

A map identifying the locations of the above alleys is attached to this report as an exhibit.

Improvements to be completed include the full removal and replacement of existing concrete asphalt, construction of a new longitudinal concrete drainage gutter, replacement of non-compliant Americans with Disabilities Act (ADA) pedestrian ramps, and new traffic legends as needed. The project will be advertised as a design/build contract with the selected contractor responsible for providing a design acceptable to the City.

FISCAL IMPACT: The total project cost is estimated to be \$850,000. The project will be funded with Community Development Block Grant funds and 2021 Lease Revenue Bond Funds in the event the bid proposals exceed the estimated amount. The cost of advertising this project should not exceed \$3,500.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the CDBG Target Area Alley Improvements Project:

1. Amend the 2019-2024 Capital Improvement Program to add the Project.
2. Authorize an \$849,440 appropriation from Community Development Block Grant funds for costs related to the Project.
3. Authorize staff to advertise for bid proposals for the CDBG Target Area Alley Improvements Project.
4. Authorize the City Manager the authority to award Agreement No. 22-104 for construction of the Project.

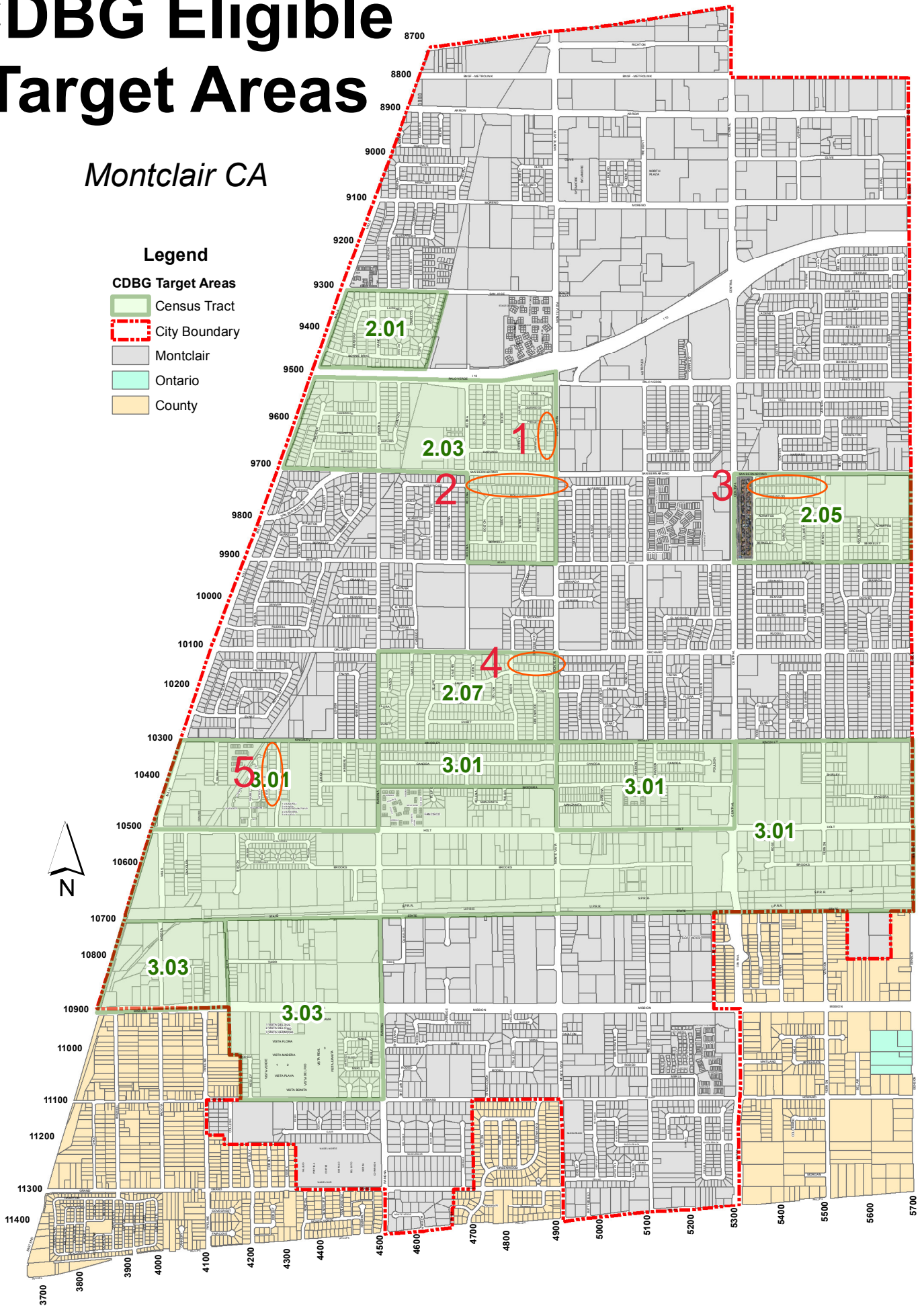
CDBG Eligible Target Areas

Montclair CA

Legend

CDBG Target Areas

- Census Tract
- City Boundary
- Montclair
- Ontario
- County



Infrastructure Fund Capital Project Funding Information

Project Name: CDBG Target Area Alley Improvements Project

Project Details: This design build project is for four separate alleyways located within the CDBG target areas. The alleyways include 9600 Monte Vista Ave, 4700 San Bernardino St., 5300 San Bernardino St. and 4800 Orchard St..

Preparation Date: September 1, 2022 Department: Engineering

Project No. (Assigned by Finance): _____ Contact/Ext.: S. Stanton x-444

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design							
R/W Acquisition							
Construction					849,440.00		CDBG Funds
Total	0.00	0.00	0.00	0.00	849,440.00	849,440.00	

Approvals: _____ Date: 9/8/22

Department: Engineering By: [Signature]

Finance By: [Signature] Date: 9-8-22

City Council Date: _____ Total Project Cost: 849,440.00

Revision Number: _____



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	COV100/CYC125
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	CITY MGR.
ITEM NO.:	1	PREPARER:	A. MYRICK
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3377 MAKING FACTUAL FINDINGS IN COMPLIANCE WITH AB 361 FOR THE CONTINUATION OF PUBLIC MEETING TELECONFERENCING DURING PUBLIC HEALTH EMERGENCIES FOR THE PERIOD OF SEPTEMBER 19, 2022, THROUGH OCTOBER 19, 2022		

REASON FOR CONSIDERATION: The City Council’s adoption of Resolution No. 22-3377 would extend the City’s remote public meeting procedures under AB 361 for an additional 30 days, expiring October 19, 2022.

BACKGROUND: Governor Newsom’s Executive Order N-29-20, which suspended and modified the Brown Act’s teleconferencing requirements during the COVID-19 pandemic, expired on September 30, 2021. On September 16, 2021, Governor Newsom signed AB 361 into law as an urgency bill and, four days later, executed an order delaying the application of AB 361 until October 2, 2021.

AB 361 permits legislative bodies of state and local entities to continue to meet virtually and remotely through telephonic and internet means (i.e., via teleconference) during a proclaimed state of emergency without having to meet the quorum, posting, physical location access, and other requirements of traditional teleconference meetings under the Brown Act. Under AB 361, a legislative body may hold entirely virtual meetings (or partially virtual meetings) until the end of the current state of emergency and during any future emergency declarations through January 1, 2024. However, to do so, the legislative body must make factual findings to continue teleconferencing every 30 days.

FISCAL IMPACT: There is no direct fiscal impact on the General Fund related to the City Council’s adoption of Resolution No. 22-3377.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3377 making factual findings in compliance with AB 361 for the continuation of teleconferencing during public health emergencies for the period of September 19, 2022, through October 19, 2022.

RESOLUTION NO. 22-3377

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR STATING COMPLIANCE WITH THE PROVISIONS OF ASSEMBLY BILL 361 INCLUDING COMPLIANCE WITH ABBREVIATED TELECONFERENCE REQUIREMENTS FOR OPEN MEETINGS, AND MAKING FACTUAL FINDINGS REGARDING THE COVID-19 PUBLIC HEALTH EMERGENCY FOR THE PERIOD OF SEPTEMBER 19, 2022, THROUGH OCTOBER 19, 2022

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

WHEREAS, the Montclair City Council, its standing committees, and the Montclair Planning 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 October 19, 2022, or such time as the City Council adopts a subsequent resolution in accordance with GC §54953(e)(3) to extend the time during which meetings may continue to be held remotely by teleconference in compliance with that section.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3377 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk



CITY COUNCIL AGENDA REPORT

DATE:	SEPTEMBER 19, 2022	FILE I.D.:	TRN510
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	PUBLIC WORKS
ITEM NO.:	2	PREPARER:	M. HEREDIA
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3379 APPROVING A FIVE-YEAR CAPITAL PROJECT NEEDS ANALYSIS FOR FISCAL YEARS 2023-24 THROUGH 2027-28		

REASON FOR CONSIDERATION: The San Bernardino County Transportation Authority (SBCTA) requires each local jurisdiction to annually update its Five-Year Capital Project Needs Analysis (CPNA). The City Council is requested to consider adopting Resolution No. 22-3379 pursuant to SBCTA requirements. A copy of proposed Resolution No. 22-3379 is attached for the City Council's review and consideration.

BACKGROUND: Measure I, the 2010-2040 countywide transportation sales tax program, requires that each local jurisdiction applying for funds from the Valley Major Street and Valley Freeway Interchange Program annually adopt and update Five-Year CPNAs. Projects in the CPNA typically include freeway interchange projects, arterial widening projects, and grade separation projects. Project funding also includes contributions from developers through the regional Development Impact Fee Program. The CPNA projects in the City of Montclair that make use of the Valley Major Street and Freeway Interchange Program funds include the reconstruction of the Monte Vista Avenue/I-10 Freeway Interchange Project and the Monte Vista/Union Pacific Grade Separation Project. The CIP list identifies the projects which will be funded by the local pass-through program.

FISCAL IMPACT: There is no immediate fiscal impact to the City with the adoption of Resolution No. 22-3379. The CPNA, as its name implies, is a needs analysis allowing SBCTA to prioritize transportation improvement needs throughout the County. Having projects listed in the CPNA is not a guarantee that funds would be made available when needed, but failure to have a project listed would further delay funding until the project is listed. The City has been successful expediting construction of major infrastructure and utilized the available loan program from SBCTA to accelerate construction of improvements needed along Monte Vista Avenue. Future revenues from the SBCTA program will be used to pay the loan.

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 22-3379 approving a Five-Year CPNA for Fiscal Years 2023-24 through 2027-28.

RESOLUTION NO. 22-3379

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR ADOPTING THE MEASURE I FIVE-YEAR CAPITAL PROJECTS NEEDS ANALYSIS FOR FISCAL YEARS 2023/2024 THROUGH 2027/2028

WHEREAS, San Bernardino County voters approved passage of Measure I in November 2004, authorizing the San Bernardino County Transportation Authority to impose a one-half of one percent retail transactions and use tax applicable in the incorporated and unincorporated territory of the County of San Bernardino; and

WHEREAS, revenue from the tax can only be used for transportation improvement and traffic management programs authorized in the Expenditure Plans set forth in Ordinance No. 04-1 of the Authority; and

WHEREAS, the Strategic Plan requires each local jurisdiction applying for revenue from certain Measure I Programs to annually adopt and update a Five-Year Capital Project Needs Analysis; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby adopts the Measure I Five-Year Capital Project Needs Analysis for Fiscal Years 2023/2024 through 2027/2028, a copy of which is attached to 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. 22-3379 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

Capital Project Needs Analysis
City of Montclair
Valley Freeway Interchange Program

Project Information		Funding	PRIOR*	FY 23/24	FY 24/25	FY 25/26	FY 26/27	FY 27/28	FUTURE
Nexus Project Cost	\$ 5,850,000								
Dev. Loan?	Yes								
5-Year Advance?	No								
Public Share:	Per Coop Agreement								
Dev. Share:									
PA&D									
Total Cost:	\$883,600.00								
Fund Type:	MSI Interchange								
	MI VFI \$ 670,652.00								
	DEV FEE \$ 212,948.00								
	- Select Fund -								
	Other.								
PS&E									
Total Cost:	\$1,431,689.00								
Fund Type:	MSI Interchange								
	MI VFI \$ 985,813.00								
	DEV FEE \$ 256,588.00								
	OTHER \$ 189,288.00								
	Other.								
ROW									
Total Cost:	\$3,057,981.68								
Fund Type:	MSI Interchange								
	DEV FEE \$ 2,231,739.00								
	- Select Fund -								
	- Select Fund -								
	Other.								
CONST									
Total Cost:	\$26,883,689.04								
Fund Type:	MSI Interchange								
	DEV FEE \$ 1,948,833.00								
	MI VFI \$ 930,218.00								
	DEV LOAN \$ 3,809,047.00								
	- Select Fund -								
	- Select Fund -								
	Other.								

*Prior should identify any expenses incurred in prior years that have not yet been reimbursed by SBCTA including anticipated FY 2022/2023 expenses.

Reference: Measure I Policies 40005 and 40006

**MINUTES OF THE REGULAR MEETING OF THE PUBLIC WORKS
COMMITTEE HELD ON THURSDAY, MAY 19, 2022, AT 4:05 P.M. HELD
VIA ZOOM TELECONFERENCE**

I. CALL TO ORDER

Chair Johnson called the meeting to order at 4:05 p.m.

II. ROLL CALL

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

III. APPROVAL OF MINUTES

The Committee approve the minutes of the March 17, 2022 meeting with revisions. Committee Member Martinez abstained.

IV. PUBLIC COMMENT — None

V. PUBLIC WORKS DEPARTMENT UPDATES/ITEMS

A. OPERATIONS

1. MAINTENANCE ACTIVITIES

An Operations Activities Report for January through April 2022 was included with the agenda. Director of Public Works/City Engineer Heredia highlighted the completion of 215 service work requests in March, which included signage, clean-up, repairs, paving surfaces, sidewalks, and irrigation. A total of 85 vehicles were serviced and over 13,000 linear feet of sewer main lines were cleaned. 325 graffiti sites were abated and 45 **Metro Nissan** banners were installed. The quarterly Transcenter clean-up was also completed in March. In April, staff completed 186 service requests. Staff also painted the retaining wall on the north side of Palo Verde Street between Mills Avenue and the San Antonio Creek Channel. Also, "No Truck Parking" signs were also installed along Brooks Street between Monte Vista Avenue and Ramona Avenue.

2. ADDITIONAL ITEMS

Operations Manager Cardona coordinated time to plant fruit trees on Sunset Park for Arbor Day, and completed the required cross-connection testing of Saratoga Park.

B. FACILITIES

1. MAINTENANCE ACTIVITIES

Facilities Activities Reports for March 2022 and April 2022 were included with the agenda. Director of Public Works/City Engineer Heredia informed the Committee that Facilities staff was busy making several types of facility-related repairs including lighting, sewer lines, door stops, ice maker, ceiling, air conditioning, and generator, among other items. She advised the Splash Pad would be ready for public use by the end of May.

Chair Johnson expressed enthusiasm for the reopening of the Splash Pad.

Director of Public Works/City Engineer Heredia added staff also installed window shades, Country Fair Jamboree event banners, smoke detectors, new lighting, and a message board at Saratoga Ball Fields.

There were no questions or issues with the reports.

2. ADDITIONAL ITEMS

Facilities Manager Paradis completed the annual fire extinguisher certification for all facilities and vehicles, as well as the fire suppression systems certification at several City facilities.

C. ENGINEERING DIVISION

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

Director of Public Works/City Engineer Heredia stated that staff installed “No U-turn” signs along the small medians on San Bernardino Street and Vernon Avenue, as requested by **Vernon Middle School**. Public Works staff also installed red tape on the stop sign poles for better visibility. The remainder of the signs for the SRTS Program for **Vernon Middle School** would be installed in the following months. Director of Public Works/City Engineer Heredia also mentioned she is coordinating a meeting with the **Ontario Montclair School District (OMSD)** to discuss the Active Transportation Plan (ATP) Cycle Six grant application involving the SRTS plan for **Monte Vista Elementary School**.

Chair Johnson conveyed questions from the principal at the **OMSD** Parent event.

2. San Antonio Creek Trail Feasibility Study

Director of Public Works/City Engineer Heredia stated that **Alta Planning**, the design consultant, completed the feasibility study and another workshop is being prepared for the end of June to address the concerns of City Council and residents raised at the last workshop.

City Manager Starr emphasized that the feasibility study is a conceptual plan and not a design plan; what was presented was a vision for the future San Antonio Creek Trail. Actual design plans would come later and in phases.

3. Parks and Recreation Master Plan

Director of Public Works/City Engineer Heredia reported that staff met with **KTU&A**, the consultant contracted for this project, for a kick-off meeting. **KTU&A** will start preparing and branding a website and social media account specific to this project. In June, they plan to start site visits to all the parks in preparing inventory to make assessments of each park.

VI. POLICE DEPARTMENT UPDATE/ITEMS

Executive Director of Public Safety/Police Chief Avels expressed appreciation towards Director of Public Works/City Engineer Heredia and her staff for installing “No Parking” signs on Brooks Street regarding the commercial parking. It has been an issue Safety staff have been trying to address and ensuring that there is clear direction for those parking in the area is paramount. He advised that Safety staff is aware of the illegal commercial parking throughout the City, noting a few problematic locations are the 5500 block of Olive Street, Moreno Street, Arrow Highway, Fremont Street near Olive Street, and Mills Avenue north of Holt Boulevard.

Executive Director of Public Safety/Police Chief Avels stated in the month of May, the watch commander noted 18 illegally parked commercial vehicles were cited in one shift. Executive Director of Public Safety/Police Chief Avels has personally observed a significant decrease in illegally parked commercial vehicles and stressed the importance of enforcing this to prevent a larger problem for public safety as is experienced in neighboring communities.

VII. COMMUNITY DEVELOPMENT DEPARTMENT PROJECT UPDATES/ITEMS

Director of Community Development Diaz informed the Committee that the **Metro Autoplex** sign located on the southside of the Interstate 10 Freeway is not working. The support structure for the new sign is located in front of the original sign and will be installed once the concrete has cured.

Director of Community Development Diaz reported **Village Partners** is getting close to obtaining building permits for the *Village at Montclair* project, which was presented to the City Council and Planning Commission on December 16, 2019.

VIII. CAPITAL PROJECT UPDATES

A. LOCAL PROJECTS

1. Pacific Electric Trail Pedestrian Bridge Replacement

Engineering Division Manager Stanton reported the bridge was installed in April and it takes about four weeks for the new concrete to cure and reach its maximum strength. At the end of May, guard rails will be installed on the edge of the bridge and the project will be completed.

2. Zone 5 & 6 Street Rehabilitation Project

Engineering Division Manager Stanton reported that the Zone 5 & 6 Street Rehabilitation Project will begin the second week of June and will take about three to four months to complete. The starting point will be by the schools on Howard Street. The goal is to complete that section prior to the start of the new school year.

City Manager Starr inquired if City staff was able to come to a resolution with Gentry Brothers regarding the cost for their services. Engineering Division Manager Stanton said yes.

B. REGIONAL PROJECTS

1. I-10 Corridor Project

Public Works Director/City Engineer Heredia reported **California Department of Transportation (Caltrans)** continues working on the I-10 Corridor project on Monte Vista Avenue with their daytime and nighttime activities such as utility relocation and drainage improvements. Monte Vista Avenue is currently reduced to one lane in each direction during the daytime hours and is closed nightly from 7:00 p.m. to 5:00 a.m., Monday through Saturday.

Public Works Director/City Engineer Heredia informed the Committee that the contractor will start shoring the wing walls on Central Avenue undercrossing and activity will begin at Benson Avenue's undercrossing in the next few weeks.

Public Works Director/City Engineer Heredia also advised there would be a 55-hour I-10 freeway closure from Vineyard Avenue to Fourth Street during the last two weeks of May.

2. Central Avenue Bridge Project

Director of Public Works/City Engineer Heredia stated that staff and the City's bridge consultant are coordinating with **Union Pacific Railroad (UPRR)** Yard Expansion Project. Staff is currently reviewing the Water Quality Management Plan (WQMP).

In regards to the bridge, the City has submitted a request to **Caltrans** for a revised project end date to obtain the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) clearance required for this project. Staff anticipated the report would be completed in July, but it is taking longer.

The design is projected to be completed in Spring of 2024. The City should be able to advertise the project in 2025 assuming the City receives the shortfall funding for construction.

BCA, the City's consultant, submitted a request to **Caltrans** headquarters to approve a scope of work change to replace and widen the bridge. However, **BCA** was informed last month that the project has been flagged as a high-priority project to be reviewed, despite City staff not receiving any correspondence from **Caltrans**.

Director of Public Works/City Engineer Heredia continued that **BCA** also submitted a bridge plan submittal to **UPRR**. Staff is also waiting on **Caltrans** to respond to the Air Quality Conformity Analysis, along with a few other items to close out the environmental process by this July.

3. Foothill Gold Line Extension Project

City Manager Starr reported the project is nearing its 50 percent completion point. The **Metro Gold Line Foothill Extension Construction Authority** will be scheduling an event somewhere between Glendora to Pomona to recognize that the project is 50 percent complete. If progress continues at this rate, that section should open up in 2025. As far as the Pomona to Montclair segment, **Governor Newsom** submitted his May budget revise including \$34 billion for transportation-related projects, which leaves the battle up to the State legislature to promote the funding the \$748 million needed to complete the segment. While this project would use a significant portion of that budget, this project is important to the region.

Governor Newsom has heard the appeals of Montclair, which he did not oppose, but ultimately the legislature will finalize how the \$34 billion will be spent on transit and transportation-related projects. City Manager Starr expressed optimism due to the wide level of support in the legislature to bring this project to fruition.

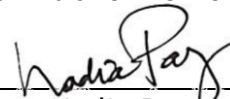
Director of Public Works/City Engineer Heredia added that she and **Denis Cournoyer**, Director of Engineering from **Foothill Gold Line**, had a discussion regarding the access to the **Metrolink** station from the **Village Partners** Development. **Mr. Cournoyer** asked for more information and was provided with the plans.

IX. COMMITTEE AND CITY MANAGER ITEMS — None

X. ADJOURNMENT

At 4:24 p.m., Chair Johnson adjourned the meeting of the Public Works Committee. The next meeting of the Public Works Committee is scheduled to be held at 4:00 p.m. on Thursday, June 21, 2022.

Submitted for Public Works Committee approval,



Nadia Paz

Transcribing Secretary

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
AUGUST 15, 2022, AT 6:16 P.M. IN THE CITY
ADMINISTRATIVE OFFICES, 5111 BENITO STREET,
MONTCLAIR, CALIFORNIA**

I. CALL TO ORDER

Mayor Pro Tem Ruh called the meeting to order at 6:16 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh, Council Member Johnson, City Manager Starr, Assistant City Manager/Director of Human Services Richter

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of August 1, 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 August 1, 2022.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

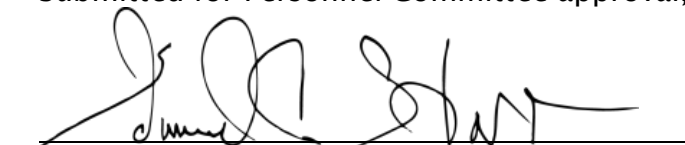
At 6:17 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:40 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 6:40 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 15, 2022 AT 7:00 P.M. IN THE CITY COUNCIL CHAMBERS, 5111 BENITO STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

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

II. INVOCATION

Pastor Lance Irely, Trinity Lutheran Church, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Mayor/Chair Dutrey 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

A. Recognition of the California 52nd Assembly District Veteran of the Year, Woman of the Year, and Business of the Year

Mayor/Chair Dutrey and the City Council recognized the following awardees from the 52nd Assembly District:

- Veteran of the Year: **Sgt. Cornelious Lambert**
- Woman of the Year: **Leticia "Letty" Rodriguez**

Each honoree received a City of Montclair Certificate of Recognition.

Mayor/Chair Dutrey announced a representative from the Small Business of the Year, **Bowlium**, could not attend this evening and the certificate would be delivered to the business.

VI. PUBLIC COMMENT

A. **Mrs. Kati Parker** introduced herself as a candidate running for Board Member of the **Chino Basin Water Conservation District** and provided her qualifications.

B. **Mrs. Carolyn Raft**, Board Trustee, **West Valley Mosquito and Vector Control District (WVMVCD)**, stated there have been several samples of mosquitoes testing positive for West Nile Virus throughout the region, with two in Rancho Cucamonga, one in Ontario, one in Upland, and one in Montclair and urged everyone to wear repellent, especially during these warm summer evenings.

C. **Mr. Al Villanueva**, **Arbol Verde Preservation Committee** founder, stated he lives in the "*El Barrio*" historic community and is one of the founders of **El Barrio Park** in Claremont. He expressed his opposition to the County building a public restroom near **El Barrio Park** along the **Pacific Electric (PE) Trail**, and stated his belief that it would attract homeless individuals, crime, vandalism, and drug use.

D. **Mr. Donald DeBoen**, resident, stated he lives near where the restroom will be installed by the **PE Trail** and there is already an issue with homeless individuals loitering in the area. He stated he believes another public restroom is not needed so close to a park that has public restrooms.

- E. **Mr. Bruce Culp**, resident, expressed his support for users of the **PE Trail** who need access to public restrooms. He stated the trail is actively used, which deters criminal activity. He also stated his disdain for the vilification of homeless people.
- F. **Mr. Michael Keenan**, Claremont resident, stated he utilizes the **PE Trail** and thinks there only needs to be a sign for trail users pointing to the public restrooms that are located about 500 feet away from the trail.

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

Mr. Reese Peterson, Trammel Crow Residential (TCR), provided an overview of the project aided by PowerPoint visuals. He also advised the City Council that **TCR** has proposed the following revisions to the Conditions of Approval (Exhibit A to Resolution No. 22-3366):

- Revision: CONDITIONS PRIOR TO THE SUBMITTAL OR APPROVAL OF A FINAL MAP (Condition Nos. 15-20) Planning/Administration
- Add subsection (f) to Condition No. 15:
f. The Director of Community Development, or his/her designee, shall have the authority to modify Conditions Nos. 15(a)-(e) (e.g., in the event that approval from third-party agencies delays project construction despite the Applicant's best efforts).
- Revise hours in Condition No. 58: Construction activity shall only be permitted from the hours of 7:00 a.m. to ~~5~~**6**:00 p.m. daily.

Mayor Dutrey declared it the time and place set for public hearing to consider Resolution No. 22-3366 and invited comments from the public.

Ms. Lydia Henry, a resident of the Claremont *Arbol Verde* community for over 30 years, stated her concerns related to transforming Huntington Drive into a thoroughfare for drivers wanting a faster connection to the mall, freeway, or transit center. She stated Huntington Drive is currently a residential street and could not accommodate increased traffic levels, which would also create more safety issues. She stated any public restrooms should be added in the park at the trailhead of the **PE Trail**.

Mr. Keenan stated he had trouble finding the documents on the City's website related to this item. He stated concerns of eminent domain being used for the addition of more homes around the development. He also asked if the community would have a gate for access to the **PE Trail** like other communities that abut the trail.

Mr. Villanueva stated he supports the project, which will support the affordable housing shortage. He stated his opinion that **Trammel Crow's** other developments in the area have not generated an increase in crime or gang activity.

Mrs. Raft stated she is happy to see this project and has wanted to see development of the site for a long time.

Mr. Culp stated he is generally supportive of projects like this; however, there are many factors preventing him from giving his full support. First, he is unclear about how the bridge will be built since there is currently no plan or agreement with **the U.S. Army Corps of Engineers**. He added he also objects to the \$700,000 fee from

the developer so the City can build affordable housing in other areas of the city. He stated he feels that money should go to sewer connections for residents in the area who have been waiting to connect to the City's sewer line, and the developer should be required to make the housing they are building affordable. He added the north end of the city should provide affordable housing options and not be reserved for the wealthy.

Mr. Amin Nash stated he lives on Huntington Drive right next to the project site and believes the road is too narrow to support the traffic that will be generated by the high number of units being built, noting he feels it would become difficult to back out of his driveway. He added while he appreciates the opportunity for public input, he would prefer the project not move forward at this time until considering other road configurations and traffic calming measures such as a roundabout.

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

Council Member Johnson asked if traffic calming measures could be implemented on Huntington Drive to address the road safety concerns.

Mr. Peterson stated TCR would be happy to work with staff to develop traffic calming measures.

Council Member Johnson asked for the width and speed limit of Huntington Drive.

Director of Public Works/City Engineer Heredia advised the road is 40 feet wide. She noted it is two one-way lanes of traffic and the speed limit is 25 miles per hour. She added no changes are contemplated for width or speed limit, as it is already consistent with residential streets in the city.

The City Council received clarification on the following Conditions of Approval:

- Condition No. 20: TCR is working with staff and *Arbol Verde* neighborhood residents to implement culturally significant landmarks, artwork, and other features that pay homage to the area's history into the development and public park.
- Condition No. 128: The referenced street study is being conducted by **Moule and Polyzoides** to develop the *North Montclair Streetscape Master Plan*, including Huntington Drive.
- Condition No. 129: The fair share of improvements to be contributed will be based on a formula agreed upon by the City and the developer.

Council Member Lopez stated the area is very culturally significant and he does not feel that adding a plaque to placate the *Arbol Verde* residents is acceptable. He also stated he believes Upland's and Claremont's concerns regarding traffic are valid and asked if a cul-de-sac configuration was considered.

Mr. Peterson emphasized TCR's dedication to ensuring residents are part of the process of determining how to represent the culture and history of the area. As to the road issue, he stated that the extension of Huntington Drive is not part of the project, and the developer created this plan to conform to the approved specific plan.

Director of Community Development Diaz clarified no right-of-way changes nor eminent domain are currently being contemplated by staff. He advised the street study is being performed to determine how to address issues with Huntington Drive. He added 50 days have elapsed since Planning Commission approved the project, and in that time, staff has reached out to the Community Development Directors of both Upland and Claremont; however, the correspondence from both cities provided to the City Council just prior to the

meeting was just received today, August 15, 2022, via email. He noted staff is certainly willing to meet with both cities to resolve any concerns, which will also be addressed by the study being conducted.

Mayor Pro Tem Ruh raised concerns about street parking and traffic hazards with deliveries being made on a narrow road like Huntington Drive. He stated he feels speed bumps may cause more issues and traffic hazards. He concurred that the property holds cultural significance for many area residents and agreed with preserving that heritage. He added that, while he supports efforts to build new housing to address the shortage throughout the state, he believes it needs to be affordable and he does not agree with separating and grouping all affordable housing together.

Council Member Martinez emphasized her appreciation for residents for bringing forward their concerns and writing letters in relation to this project, especially issues such as gentrification and cultural representation. She also commended TCR's efforts to work with the residents to address their concerns.

Mayor Dutrey asked if the streetscape plan would be presented to the City Council for approval when completed.

City Manager Starr advised it would, adding TCR is only building a segment of Huntington Drive from Monte Vista Avenue to the west end of the property, but it would not connect to Huntington Drive; that connection is a decision to be made by the City Council at a future date, separate from this project, and should not be a part of this project's consideration. He pointed out City of Claremont staff had originally proposed the extension of Huntington Drive to Monte Vista Avenue to Montclair staff approximately twenty years ago.

Mayor Dutrey asked if there is potential for a cul-de-sac configuration for Huntington Drive instead of connecting to the Claremont side on the west.

City Manager Starr indicated the North Montclair Downtown Specific Plan (NMDSP) provides for the street to connect; however, it would be the City Council's decision and the specific plan could be amended. He added the streetscape plan would also provide additional studies for potential configurations of the street. He noted TCR planned the project on the assumption that the street would eventually become connected, as depicted in the NMDSP.

Council Member Lopez expressed his belief there is a lack of adequate parking within the project, noting he foresees residents and guests of the project and trail users parking on Huntington Drive and impacting the nearby residents. He also expressed concerns that the single-family home residents to the west of the development would be pushed out as a result of recommendations by future studies.

City Manager Starr stated the parking included within the development meets the requirements of the NMDSP, and added that deliveries can be made on the interior streets of the project.

Ms. Alisha Winterswyk, Best Best & Krieger, the City's special counsel for planning and development, advised that the Housing Accountability Act prohibits the City Council from denying a project without making findings that relate directly to health and safety.

Moved by Council Member Martinez, seconded by Council Member Johnson, and carried 5-0, the City Council adopted 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, incorporating the changes proposed by the applicant to Exhibit A.

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)

Mayor Dutrey declared it the time and place set for public hearing to consider Ordinance No. 22-999 and invited comments from the public.

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

Mayor Pro Tem Ruh emphasized his belief that the voters should not be asked to put a tax into effect without first knowing the proposed regulations on the businesses to be taxed. He asked if the ordinances that were presented to the City Council in 2019 would go into effect upon voter approval at this November's election.

City Manager Starr reiterated the prior ordinances are in no way connected to the ballot measures, and regulations would need to be considered separately by the City Council using the advisory measure as an indication of current voter support for cannabis businesses.

Council Member Lopez stated his understanding that the tax measure in no way addresses licensing, zoning, or the use of funds raised through the tax. He further noted this would allow taxation to be put into place at a rate under the City Council's own discretion from zero percent up to seven percent, but only if cannabis businesses are legalized in Montclair by the City Council.

Moved by Council Member Lopez, seconded by Council Member Johnson, and carried that Ordinance No. 22-999 be read by number and title only, further reading be waived, and this be declared its second reading; and that the City Council adopt Ordinance No. 22-999.

Second reading and adoption of Ordinance No. 22-999 was approved by the following 5-0 vote:

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

VIII. CONSENT CALENDAR

Item C-2 was pulled from the Consent Calendar.

City Manager Starr requested Item D-1 be adopted with staff's recommended changes.

Mayor Dutrey entertained discussion on Item C-1 prior to vote on the Consent Calendar.

Moved by Council Member/Director Johnson, seconded by Council Member/Director Lopez, and carried unanimously 5-0, the City Council pulled Item C-2, accepted staff's recommended changes to Item D-1 and approved the remainder of the Consent Calendar as presented, with discussion on Item C-1:

A. Approval of Minutes

1. Regular Joint Meeting — August 1, 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 August 1, 2022 regular joint meeting.

B. Administrative Reports

1. Receiving and Filing of City Treasurer's Report

The City Council received and filed the City Treasurer's Report for the month ending July 31, 2022.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the Warrant Register dated August 15, 2022, totaling \$2,743,764.37; and the Payroll Documentation dated July 3, 2022, amounting to \$712,817.94 gross, with \$498,513.69 net being the total cash disbursement; and the Payroll Documentation dated July 17, 2022, amounting to \$657,648.47, with \$461,573.44 net being the total cash disbursement.

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

The City Council acting as successor to the Redevelopment Agency Board received and filed the Successor to the Redevelopment Agency Treasurer's Report for the month ending July 31, 2022.

4. Approval of Successor Agency Warrant Register

The City Council acting as successor to the Redevelopment Agency Board approved the Successor to the Redevelopment Agency Warrant Register dated 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.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending July 31, 2022.

6. Approval of MHC Warrant Register

The MHC Board approved the MHC Warrant Register dated 07.01.22-07.31.22 in the amount of \$32,000.79.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending July 31, 2022.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 07.01.22-07.31.22 in the amount of \$0.00.

9. 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.

10. Authorizing the Purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co.

Declaring a 2004 International Combo Sewer Truck (Unit 314) as Surplus and Available for Auction

The City Council took the following actions:

- (a) Authorized the purchase of a Vactor CNG 2110 Plus Sewer Cleaner Truck from Haaker Equipment Co.
- (b) Declared a 2004 International Combo Sewer Truck (Unit 314) as surplus and available for auction.

C. Agreements

1. Amending the 2019–2024 Capital Improvement Program to Include the Holt Boulevard Median and Street Rehabilitation Project

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

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

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

Authorizing a \$45,829.25 Design Services Contingency for the Project

Council Member Martinez noted this is a significant project for the south end of the community and expressed her appreciation for the coming improvements.

The City Council took the following actions:

- (a) Amended the 2019–2024 Capital Improvement Program to include the Holt Boulevard Median and Street Rehabilitation Project.
- (b) Approved *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.
- (c) Approved *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.
- (d) Authorized a \$503,000 appropriation from 2021 Lease Revenue Bond proceeds for costs related to *Agreement Nos. 22-84* and *22-85*.
- (e) Authorized a \$45,829.25 design services contingency for the Project.

3. 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

Authorizing Executive Director of Public Safety/Police Chief Robert Avels to Sign *Agreement No. 22-89*

The City Council took the following actions:

- (a) Approved *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.
- (b) Authorized Executive Director of Public Safety/Police Chief Robert Avels to sign *Agreement No. 22-89*.

4. **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**

Authorizing the City Manager to Sign *Agreement No. 22-90* and Any Other Related Documents to Effectuate Related Programs

The City Council took the following actions:

- (a) Approved *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.
- (b) Authorized the City Manager to sign *Agreement No. 22-90* and any other related documents to effectuate related programs.

D. Resolutions

1. **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**

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

Adoption of Montclair Housing Corporation Resolution No. 22-02 Approving *Agreement No. 22-26*, an Affordable Housing Agreement

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

City Manager Starr advised staff recommends the City Council, Montclair Housing Authority (MHA), and Montclair Housing Corporation (MHC) approve the addition of the following recital to each of the three proposed resolutions: ***“WHEREAS, no development of the Property is contemplated;”***

The City Council took the following actions:

- (a) Amended Resolution No. 22-3342 by adding the following recital: “WHEREAS, no development of the Property is contemplated; and”.
- (b) Adopted Resolution No. 22-3342, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement between the City, MHC, and MHA; authorized 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.

The Montclair Housing Authority took the following actions:

- (a) Amended MHA Resolution No. 22-01 by adding the following recital: “WHEREAS, no development of the Property is contemplated; and”.
- (b) Adopted MHA Resolution No. 22-01, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement, and accepting the transfer of certain real property from the City of Montclair.

The Montclair Housing Corporation took the following actions:

- (a) Amended MHC Resolution No. 22-02 by adding the following recital: "WHEREAS, no development of the Property is contemplated; and".
- (b) Adopted MHC Resolution No. 22-02, as amended, approving *Agreement No. 22-26*, an Affordable Housing Agreement.
- (c) Authorized a \$40,000 appropriation from the Housing Trust Fund for rehabilitation of the property located at 5072 Moreno Street.

2. 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

The City Council adopted 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.

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

2. 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

Council Member Lopez stated his understanding that the contracts approved earlier this year were to cover the full year.

Director of Human Services Richter advised the prior contracts ended in August and new contracts would cover the upcoming season through December.

Moved by Mayor Pro Tem Ruh, seconded by Council Member Johnson, and carried 5-0, the City Council approved *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.

X. COMMUNICATIONS

A. Department Reports — None

B. City Attorney

City Attorney Robbins requested the City Council meet in closed session concerning the following:

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

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

C. City Manager/Executive Director — None

D. Mayor/Chair

Mayor/Chair Dutrey made the following comments:

- 1. He commended the successful National Night Out event and thanked all staff involved.

2. He acknowledged upcoming days and months of recognition, holidays, and celebrations:
 - August 14 — Victory in Japan Day
 - August 26 — Women’s Equality Day
 - September 5 — Labor Day
 - September 11 — National Grandparents Day
 - September 16 — Mexican Independence Day
 - September 16 — National POW/MIA Recognition Day
 - September 17 — Constitution Day
 - September 23 — Native American Day
 - September 25-27 — Rosh Hashanah
 - Sept. 15 - Oct. 15 — National Hispanic Heritage Month
3. He recognized all candidates for the upcoming General Municipal Election: himself and **Oscar Miranda** running for Mayor; and Mayor Pro Tem Ruh, Council Member Martinez, **Xavier Mendez**, and **Juliet Orozco** running for City Council; and wished everyone luck on their campaigns.

E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:
 - (a) He thanked veterans who fought during the Victory Day in Japan marking the end of World War II.
 - (b) He stated 60 percent of water is used outdoors and that mowed green turf is the most irrigated crop. He noted the state may soon outlaw green landscapes if things get too drastic. He urged residents to conserve water as much as possible.
2. Council Member/Director Lopez made the following comments:
 - (a) He and all other Council Members attended the **Montclair High School (MHS)** booster club’s spaghetti dinner fundraiser event for the football team.
 - (b) He announced the **MHS Cavaliers** will have its first football game of the season on Friday, August 19th, playing against the **Village Christian Challengers**. He encouraged the community to come and support their team.
3. Council Member/Director Johnson announced her attendance at the **National League of Cities Women in Municipal Government** conference last week in Sacramento, which covered issues from childcare to education. She stated a fascinating seminar was presented on disaster preparedness. She indicated her interest in learning about the City’s disaster preparedness plans that are in place.
4. Council Member/Director Martinez shared that her sister had just completed her first day of classes at **Chaffey College**. She added that her sister received a *Montclair to College (MTC)* scholarship, which provides two years of free tuition at **Chaffey** for **MHS** graduates. She noted their mother also attended **Chaffey**, while she attended **Mt. San Antonio College**, where she also served on the student government board.

F. Committee Meeting Minutes

1. **Minutes of Personnel Committee Meeting of August 1, 2022**
The City Council received and filed the minutes of the Personnel Committee meeting of August 1, 2022, for informational purposes.

XI. CLOSED SESSION


At 9:30 p.m., the City Council went into closed session to discuss real property negotiations.

XII. CLOSED SESSION ANNOUNCEMENTS

At 9:42 p.m., the City Council returned from closed session. Mayor Dutrey announced that the City Council met in closed session to discuss real property negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 9:42 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.



Andrea Myrick,
City Clerk

PENDING APPROVAL

**CITY OF MONTCLAIR
TREASURER'S REPORT
FOR THE MONTH ENDING
AUGUST 31, 2022**

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CASH AND INVESTMENTS BY TYPE

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

AUGUST 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 AUGUST 31, 2022

Fund	Beginning Balance	Receipts	Disbursements	Interfund Transfers	Ending Balance
General Fund	\$ 4,133,648.09	\$ 2,977,342.45	\$ 2,642,378.82	\$ (16,320.82)	\$ 4,452,290.90 (1)
Gas Tax Fund	(342,675.89)	88,488.07	68,156.65	-	(321,346.47) (2)
Road Maintenance - Section 2032	1,299,939.94	103,533.45	-	1,495.10	1,374,968.49
Measure I Fund	4,711,962.90	86,011.05	-	5,784.55	4,803,758.50
Traffic Safety	129,601.01	4,075.10	-	-	133,676.11
Disability Access Fund - Bus. License	46,961.90	948.00	-	-	47,909.90
Park Maintenance	74,415.39	3,080.90	927.66	-	76,568.63
Park Development	1,154,807.06	-	48,063.62	-	1,154,807.06
CD8C	(6,146.36)	13,036.27	-	-	(41,173.71) (2)
SB2 Planning Grant	(20,842.50)	-	1,506.00	-	(20,842.50) (2)
Air Quality Improvement Trust	(24,354.65)	-	-	162.67	(24,354.65) (2)
SB City Cares Act Infrastructure	(52,167.12)	23,457.81	17,584.14	-	(46,293.45) (2)
Senior Nutrition Program	4,780,264.57	-	-	-	4,780,264.57
American Rescue Plan	118,571.60	-	-	146.99	118,718.59
Forfeiture Fund - State	98,741.01	-	486.73	124.22	98,378.50
Proposition 30/5B 109	212,661.89	58,076.00	19,332.67	-	251,405.22
SB 509 Public Safety	309,333.43	3,424.33	-	384.91	313,142.67
Forfeiture Fund-Federal/DOJ	0.11	0.01	-	-	0.12
Asset Seizure Fund	38,040.97	1,646.54	2,705.78	52.47	35,386.66
Section 11489 Subfund	125,446.91	-	5,012.91	164.47	122,245.01
Fed Asset Forfeiture-Treasury	98,315.00	-	-	-	98,315.00
School District Grant Fund	410,221.33	-	-	510.45	410,731.78
State Supplemental Law Enforce	15,005.00	-	-	18.67	15,023.67
Local Law Enforcement Block Gr	2,293.92	11.48	-	2.84	2,308.24
PC 1202.5 Crime Prevention	76,217.67	-	5,156.00	94.84	71,156.51
Recycling Grant Fund	(261.41)	-	-	-	(261.41) (2)
Homeless Emergency Aid Program	(111.00)	-	-	-	(111.00) (2)
Bureau of Justice Assistance	180,634.00	-	-	-	180,634.00
Statewide Park Dev Grant	22,911.62	-	2,000.00	-	20,911.62
Homeless Housing Assist Preven	(50,210.25)	-	18,216.25	-	(68,426.50) (2)
LEAP Grant	573,023.61	-	143,544.31	-	429,479.30
After School Program Fund	-	-	-	-	-
OTS Grant	1,290.78	-	-	-	1,290.78
FIRST 5 Fund	280,505.91	-	1,804.74	-	278,701.17
Safety Dept. Grants	1,370.50	-	-	-	1,370.50
OSMD Immunization Grant	4,187.22	-	365.12	-	3,822.10
Kaiser Permanente Grant	16,375.31	3,898.78	2,279.98	-	14,095.33
Resource Center Grant - OMSD	(6,110.08)	-	2,460.93	-	(4,762.23) (2)
Title IIB Sr Support Services	15,107.19	-	-	-	15,107.19
Community Foundation Grant	144,691.56	-	-	-	144,691.56
ASES Supplemental Grant	12,109.88	3,227.55	4,182.43	-	11,155.00
E.M.S. - Paramedic Fund	4,828,481.06	-	387,805.57	-	4,440,675.49
Economic Development	500.00	-	-	-	500.00
City Contributions/Donations Fund	2,673,500.95	431,266.65	775,420.54	3,206.89	2,332,553.75
Sewer Operating Fund	2,244,611.29	-	-	2,793.03	2,247,404.32
Sewer Replacement Fund	126,594.47	-	3,655.14	206.56	123,145.89
CFD 2011-1 (Passes)	90,090.38	-	1,161.95	111.94	89,040.37
CFD 2011-2 (Arrow Station)	3,884,380.82	143,826.20	-	1,060.42	4,028,207.02
Inland Empire Utility Agency	852,203.83	14,362.62	-	-	867,646.57
Sewer Expansion Fee Fund	1,254,832.90	27,136.22	-	-	1,281,969.12
Developer Impact Fees - Local	263,674.83	61,537.06	-	-	325,211.89
Developer Impact Fees - Regional	177,796.22	-	-	-	177,796.22
Burtec Pavement Impact Fees	324,111.38	-	-	-	324,111.38
PUC Reimbursement Fund-MVGS	361,966.52	21,440.00	-	-	383,396.52
Utility Underground In-Lieu	104,018.73	1,245.10	-	-	105,263.83
General Plan Update Fee	555,708.20	-	-	-	555,708.20
Housing Fund	78,061.95	9,265.72	-	-	87,327.67
Public Education/Govt. PEG Fee Fund	(952,181.88)	4,000.00	942,939.39	-	(1,891,121.27) (4)
Infrastructure Fund	(119,521.65)	-	21,381.73	-	(140,903.38)
COVID-19	4,811,553.53	-	-	-	4,811,553.53
Successor Agency Bonds-Taxable	8,001,549.54	-	-	-	8,001,549.54
Successor Agency Bonds-Tax Exempt	(284,589.74)	-	-	-	(284,589.74)
2014 Lease Revenue Bond Proceeds	(301,964.34)	-	29,072.44	-	(331,036.78)
2021 Lease Revenue Bond Proceeds	(180,114.51)	151,165.72	-	-	(28,928.79) (5)
2014 Lease Revenue Bond Debt Svc	1,725,255.75	-	-	-	1,725,255.75
2021 Lease Revenue Bond Debt Svc	(3,500.00)	-	-	-	(3,500.00)
Pension Obligation Bond Debt Svc	0.96	-	-	-	0.96
Contingency Fund	18,806,365.34	82,767.86	-	-	18,889,133.20
Assigned General Fund Reserves	-	-	-	-	-
TOTALS	\$ 66,009,886.20	\$ 4,319,250.94	\$ 5,147,634.50	\$ -	\$ 67,181,502.64

Negative Cash Notes follow this presentation.

Notes on Negative Cash Balances

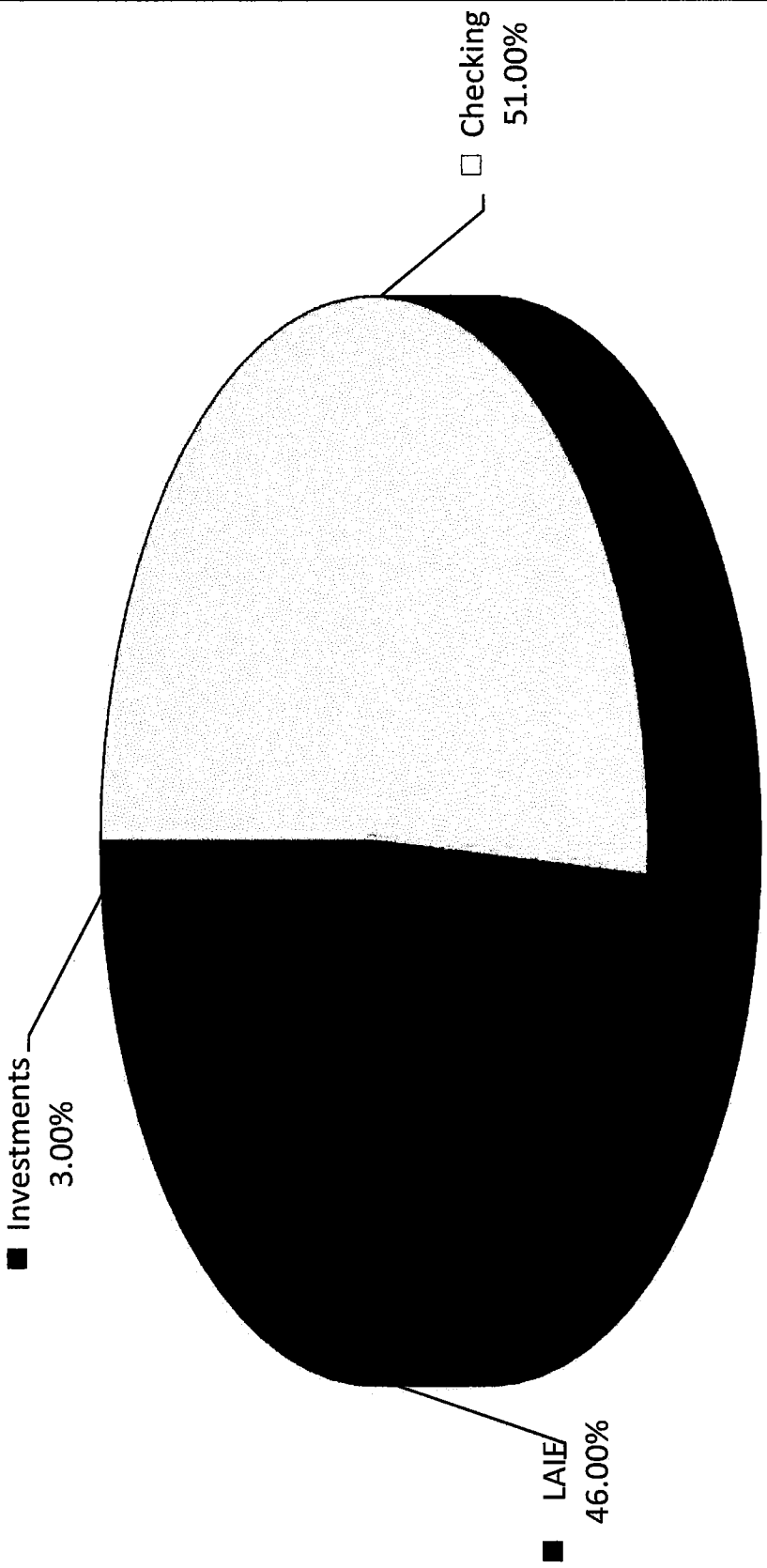
- (1) The General Operating Fund may have a negative cash for the majority of the fiscal year awaiting property and sales tax collections. This is covered by the Contingency Fund and other General Fund Reserve Funds until those collections are received. As Contingency and General Reserves exceed this 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 AUGUST 31, 2022**

	Par Value	Purchase Date	Maturity Date	Coupon Interest Rate	Current Market Value	Balance at Cost	Totals
CHECKING ACCOUNT							
Checking Account							\$ 34,276,140.47
Asset Seizure Account							\$ 2,468.77
CASH W/FISCAL AGENT, CD's, LAIF DEPOSITS, AND SHORT-TERM U.S. AGENCY SECURITIES							
Local Agency Investment Fund (LAIF)				1.380%	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
U.S. AGENCY SECURITIES							
							\$ -
TOTAL							<u>\$ 67,181,502.64</u>

Current market values obtained from US Bank.

CITY OF MONTCLAIR
CASH AND INVESTMENTS BY TYPE
August 31, 2022
Total Cash & Investments \$67,181,502



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

FOR THE MONTH ENDING

August 31, 2022

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH BY FUND
August 31, 2022**

COMBINED OPERATING FUND

Operating	<u>(28,715.39)</u>	\$ (28,715.39)
-----------	--------------------	----------------

LRPRP Fund

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

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

\$ 1,093,592.45

**CITY OF MONTCLAIR AS SUCCESSOR TO
THE REDEVELOPMENT AGENCY
STATEMENT OF CASH
August 31, 2022**

Checking Account

US Bank

1,093,592.45

TOTAL CASH

1,093,592.45

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

August 31, 2022

City of Montclair
Final Warrant Register
Council Date 09/19/2022
Regular Warrants
Checking Account: Successor to the RDA

	<u>Warrants</u>	<u>US Bank transfers</u>	<u>Area Totals</u>
SRDA Combined Operating Fund	0.00	7,167.14	7,167.14
RORF (Redevelopment Obligation Retirement Funds)	0.00	0.00	0.00
	<u>0.00</u>	<u>7,167.14</u>	
			<u><u>7,167.14</u></u>

Note: Reimburse City for 8/4 payrolls
Reimburse City for 8/18 payrolls

Vice Chair Ruh

Book Transfer Daily Activity Detail

CITY OF MONTCLAIR

SinglePoint

Reported Activity From 08/01/2022 To 08/31/2022

Printed on 09/06/2022 at 1:07 PM PDT



Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/18/2022	\$3903.69	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 08/18/2022 Payroll
Initiate Date 08/18/2022
Initiate Time 09:55AM CDT
Initiated By JKULBECK
Completed Date 08/18/2022
Completed Time 09:55AM CDT

Effective Date	Amount	From: Debit Account Number	To: Credit Account Number	Status
08/05/2022	\$3263.45	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 08/04/22 Payroll
Initiate Date 08/05/2022
Initiate Time 02:44PM CDT
Initiated By JKULBECK
Completed Date 08/05/2022
Completed Time 02:44PM CDT

Total Number of Book Transfers: 2
Total Amount of Book Transfers: \$7,167.14

--- End of Report ---

**CITY OF MONTCLAIR
HOUSING CORPORATION
TREASURER'S REPORT**

FOR THE MONTH ENDING

August 31, 2022

CITY OF MONTCLAIR
HOUSING CORPORATION
STATEMENT OF CASH AND INVESTMENTS
August 31, 2022

	<u>Interest Rate</u>	<u>Market Value</u>	<u>Book Value</u>
Checking Account			
US Bank			306,014.90
Investments			
LAIF	1.38%	1,696,231.16	<u>1,718,354.27</u>
TOTAL CASH & INVESTMENTS			<u><u>2,024,369.17</u></u>

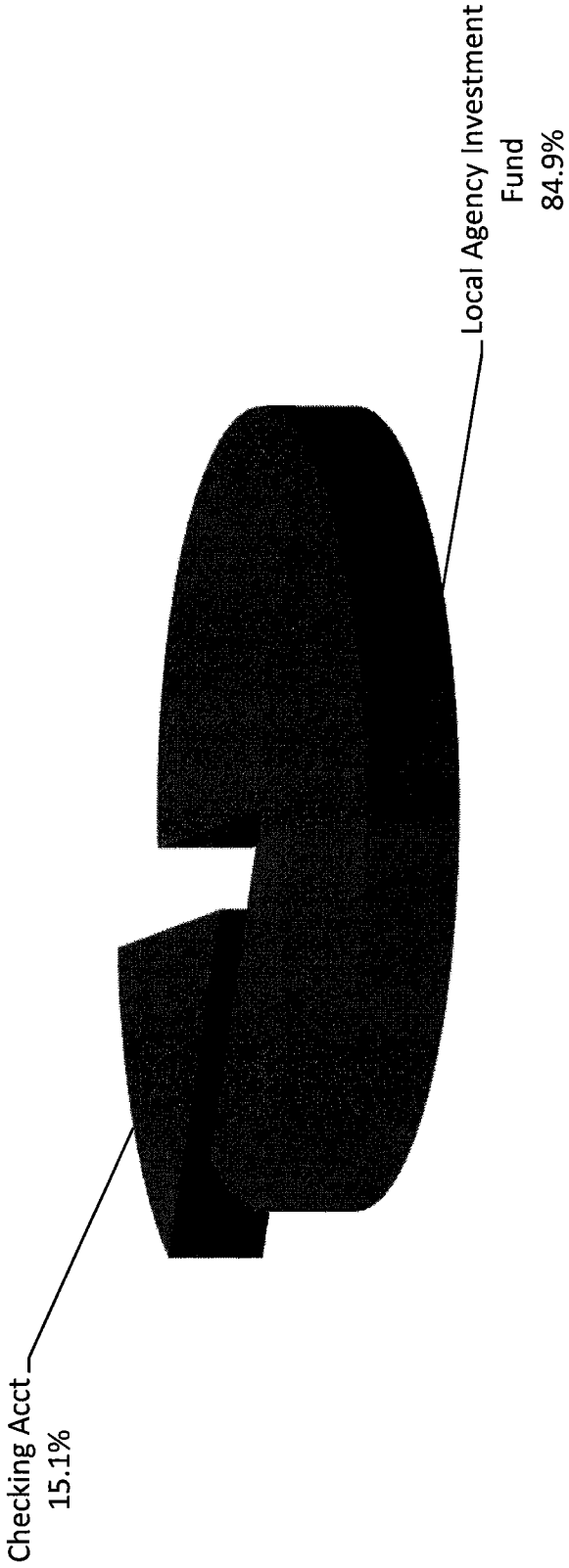
NOTE:
Pursuant to the Corporation's Investment Policy, all moneys are invested in banks, the Local Agency Investment Fund, and in securities with maturities of no greater than three years.

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

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

**CITY OF MONTCLAIR
HOUSING CORPORATION
CASH AND INVESTMENTS GRAPH
August 31, 2022**

Total Cash & Investments - \$2,024,369



**CITY OF MONTCLAIR
HOUSING CORPORATION
WARRANT REGISTER**

FOR THE MONTH ENDING

August 31, 2022

City of Montclair
Final Warrant Register
Council Date 09/19/2022
Regular Warrants
Checking Account: MHC

<u>Warrants</u>	<u>ACH Transfers</u>	<u>Voided Checks</u>	<u>US Bank transfers</u>	<u>Totals</u>
82,137.70	0.00	0.00	0.00	82,137.70

August 2022 Total

82,137.70

US Bank transfers:

Vice Chair Ruh

Accounts Payable

Checks by Date - Summary by Check Number

User: cramirez
Printed: 9/6/2022 1:36 PM



Check No	Vendor No	Vendor Name	Check Date	Check Amount
5358	mont074	Monte Vista Water District	08/03/2022	2,153.92
5359	buch002	Buchbinder Maintenance, Inc.	08/04/2022	2,282.36
5360	Denk001	Denkers Garage Doors	08/04/2022	4,760.00
5361	Ecol001	Ecological Cleaning	08/04/2022	1,400.00
5362	JGL001	JGL Electric Company, Inc.	08/04/2022	7,240.00
5363	land012	Landscape Maintenance Unlimited	08/04/2022	7,505.00
5364	Nagc006	NAGCO GLASS	08/04/2022	312.72
5365	Perf003	Performance Construction & Remodeling I	08/04/2022	975.00
5366	buch002	Buchbinder Maintenance, Inc.	08/18/2022	1,373.23
5367	Hugo001	Hugo Jaramillo	08/18/2022	12,687.50
5368	JGL001	JGL Electric Company, Inc.	08/18/2022	1,880.00
5369	land012	Landscape Maintenance Unlimited	08/18/2022	14,105.00
5370	Mont002	City of Montclair	08/18/2022	8,839.52
5371	mont074	Monte Vista Water District	08/18/2022	4,612.23
5372	Sout018	Southern California Edison Co	08/18/2022	704.47
5373	Sout021	Southern California Gas Co	08/18/2022	563.78
5374	Denk001	Denkers Garage Doors	08/30/2022	1,915.00
5375	Ecol001	Ecological Cleaning	08/30/2022	3,800.00
5376	mont074	Monte Vista Water District	08/30/2022	629.74
5377	Perf003	Performance Construction & Remodeling I	08/30/2022	3,500.00
5378	Sout018	Southern California Edison Co	08/30/2022	898.23
Report Total (21 checks):				82,137.70

**CITY OF MONTCLAIR
HOUSING AUTHORITY
TREASURER'S REPORT**

FOR THE MONTH ENDING

August 31, 2022

Schedule 1

**CITY OF MONTCLAIR
HOUSING AUTHORITY
STATEMENT OF CASH
August 31, 2022**

	<u>Amount</u>
Checking Account	
US Bank	3,179,582.44
TOTAL CASH	\$ <u>3,179,582.44</u>

NOTE:

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

**CITY OF MONTCLAIR
HOUSING AUTHORITY
WARRANT REGISTER
FOR THE MONTH ENDING
August 31, 2022**

City of Montclair
Final Warrant Register
Council Date 09/19/2022
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
August 2022 Total			<u><u>0.00</u></u>

Vice Chair Ruh