



**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, October 3, 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

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

III. PLEDGE OF ALLEGIANCE

IV. ROLL CALL

V. PRESENTATIONS

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 — September 19, 2022 [CC/SA/MHC/MHA/MCF] 54

B. Administrative Reports

1. Consider Authorizing the Purchase of Five 2023 Ford Explorer Interceptor Utility Vehicles and One Ford Edge SE for the Police Department Fleet from Fritts Ford in the Total Amount of \$299,605.93 [CC]

Consider Authorizing a \$46,914.93 Appropriation from the Inflation Control Expenditure Fund to Cover the Unanticipated Cost Increase of the Vehicles [CC]

Consider Declaring Six Ford Police Interceptor Utility Vehicles as Surplus and Available for Parts or for Sale at Auction [CC] 4

2. Consider Approval of Warrant Register & Payroll Documentation [CC] 7

C. Agreements

1. Consider Approval of Agreement No. 22-92 with Western University of Health Sciences to Provide College of Osteopathic Medicine of the Pacific Students with Clinical and Educational Training at the Montclair Medical Clinic, Subject to Any Revisions Deemed Necessary by the City Attorney [CC] 8

2. Consider Amending the 2019-2024 Capital Improvement Program to Include the Mills Avenue Street Rehabilitation Project from Holt Boulevard to Moreno Street [CC]

Consider Approval of Agreement No. 22-99 with Andreasen Engineering, Inc. for Performance of Surveying, Evaluation of Pedestrian Connectivity Improvements, and Preparation of Sidewalk Improvement Plans for Mills Avenue Street Rehabilitation Project, Subject to Any Revisions Deemed Necessary by the City Attorney [CC]

Consider Authorizing a \$30,000 Appropriation from 2021 Lease Revenue Bond Proceeds for Costs Related to Agreement No. 22-99 [CC]

Consider Authorizing a \$3,400 Design Services Contingency for the Mills Avenue Street Rehabilitation Project [CC] 16

D. Resolutions

1. Consider Adoption of Resolution No. 22-3378 Authorizing Placement of Liens on Certain Properties for Delinquent Sewer and Trash Charges [CC] 35

IX. PULLED CONSENT CALENDAR ITEMS

X. BUSINESS ITEMS

- A. Consider Adoption of Resolution No. 22-3380 Making Certain Findings for an Exception to the 180-Day Wait Period Pursuant to Government Code Sections 7522.56, 3301, and 21221 (H) with Authorization to Hire David Taylor into the Part-Time, Temporary Retired Annuitant Position of Police Officer [CC]

Consider Authorizing a \$32,155 Appropriation from the FY 2022-23 Police Department Personnel Budget to Fund the Part-Time, Temporary Retired Annuitant Position of Police Officer [CC]

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XI. RESPONSE

- A. Consider Receiving and Filing the Response to City Council Inquiry Regarding Commercial Cannabis Community Benefits Funding and Social Equity Programs [CC]

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XII. COMMUNICATIONS

- A. Department Reports

- 1. Human Services Department — Upcoming Activities & Events

- B. City Attorney

- 1. Request for City Council to Meet in Closed Session Pursuant to Government Code §54957 Regarding Public Employee Performance Evaluation: City Manager/Executive Director [CC]
- 2. Request for City Council to Meet in Closed Session Pursuant to Government Code §54956.9(d)(1) Regarding Pending Litigation [CC]

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

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

- C. City Manager/Executive Director

- D. Mayor/Chairperson

- E. Council Members/Directors

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

- 1. Personnel Committee Meeting — September 19, 2022 [CC]

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XIII. CLOSED SESSION

XIV. CLOSED SESSION ANNOUNCEMENTS

XV. 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 17, 2022, at 7:00 p.m.

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

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

I, Andrea M. Myrick, City Clerk, hereby certify that I posted, or caused to be posted, a copy of this Agenda not less than 72 hours prior to this meeting on the City's website at <https://www.cityofmontclair.org/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 29, 2022.



CITY COUNCIL AGENDA REPORT

DATE: OCTOBER 3, 2022 **FILE I.D.:** VEH450/VEH120

SECTION: CONSENT - ADMIN. REPORTS **DEPT.:** POLICE

ITEM NO.: 1 **PREPARER:** A. GRAZIANO

SUBJECT: CONSIDER AUTHORIZING THE PURCHASE OF FIVE 2023 FORD EXPLORER INTERCEPTOR UTILITY VEHICLES AND ONE FORD EDGE SE FOR THE POLICE DEPARTMENT FLEET FROM FRITTS FORD IN THE TOTAL AMOUNT OF \$299,605.93

CONSIDER AUTHORIZING A \$46,914.93 APPROPRIATION FROM THE INFLATION CONTROL EXPENDITURE FUND TO COVER THE UNANTICIPATED COST INCREASE OF THE VEHICLES

CONSIDER DECLARING SIX FORD POLICE INTERCEPTOR UTILITY VEHICLES AS SURPLUS AND AVAILABLE FOR PARTS OR FOR SALE AT AUCTION

REASON FOR CONSIDERATION: The City Council is requested to consider authorizing the purchase of five 2023 Ford Explorer Interceptor Utility vehicles and one Ford Edge SE to replace four patrol vehicles, one administrative vehicle, and one investigative vehicle currently used by Police Department personnel. Due to cost increases since obtaining estimates during the budgetary process, the City Council is also requested to consider authorizing an allocation of \$46,914.93 from the Inflation Control Expenditure Fund for the purchases. The City Council is additionally requested to consider declaring six Ford Police Interceptor Utility vehicles as surplus and available for parts or for sale at auction, with the proceeds being credited back to the Inflation Control Expenditure Fund.

BACKGROUND: The City Council approved the purchase of four 2023 Ford Explorer Interceptor Utility vehicles for patrol use, one 2023 Ford Explorer Interceptor Utility vehicle for administrative use, and one Ford Edge SE vehicle for investigative use in the Police Department Fiscal Year 2022-23 Budget. The new vehicles would replace two 2013 (Units 413 and 453) and four 2016 Ford Police Interceptor Utility vehicles (Units 404, 414, 420, and 424) in the Police Department's fleet. All of the current Police Interceptor Utility vehicles have high mileage and are in deteriorated condition with worn interiors and other physical and mechanical damage.

As vendors were contacted to obtain bids for the vehicles, it was discovered that due to the supply chain issues with the automotive manufacturers, the ordering window for these particular vehicles was significantly reduced to only ten days; staff was unable to place the orders for the Police Interceptor Utility vehicles before the purchasing window closed. In addition, delivery of ordered vehicles has been inconsistent, as the Department has not yet received the vehicles ordered in the past fiscal year. One of the Department's prior vendors, Fritts Ford, advised that they have five unclaimed orders for Police Interceptor Utility vehicles and would be able to modify these orders to Montclair's specifications. Other vendors, including National Fleet Auto, did not have any surplus vehicle orders available. National Fleet Auto was, however, able to provide a comparable quote without the ability to place an order for the Police Interceptor Utility vehicles.

One of the investigative vehicle replacements, a Ford Edge SE, was similarly difficult to obtain a quote for, and vendors were unable to place orders due to a short ordering

window. However, Fritts Ford was able to place an order for this vehicle if the order was made in a timely matter and offered to create a temporary purchase order to hold the vehicle pending approval by City Council. The quote provided for the Ford Edge SE was also similar in pricing to the quote provided by National Fleet Auto.

Of note was the increase in the quoted cost for these vehicles compared to the projected cost during the budgetary process. Since obtaining budgetary quotes, the cost for Police Interceptor Utility vehicles has increased significantly. The current FY 2022-23 Budget includes \$167,200 for four patrol Police Interceptor Utility vehicles. Ford increased the cost to \$209,005.80, which includes an increased cost for paint to a black-and-white color scheme. Additionally, \$42,800 was budgeted for an administration Police Interceptor Utility. This vehicle is functionally equivalent to the patrol vehicles and is fully pursuit capable, but in an unmarked and subdued configuration without the need for interior upgrades such as prisoner compartment and prisoner door panels. Ford increased the cost of this vehicle to \$49,736.91. Staff budgeted \$42,691 for one of the Investigations vehicles, and Fritts was able to provide a price of \$40,863.22. Cost increases to the Police Interceptor Utility vehicles was due in large part to supply chain issues, availability, and other manufacturing cost increases for this particular vehicle type, and are expected to maintain into the next budget year.

With the inability to place vehicle orders through Ford, it is unknown with any certainty which dealers may have unclaimed orders, and checking with every dealer in the Southern California region is not practical. Fritts Ford has been the chosen vendor for Department vehicles for the past few fiscal years, and its pricing has been the lowest of the chosen vendors. With Fritts Ford having the availability of the requested five Police Interceptor Utility vehicles, and the claimed ability to order the Ford Edge, Fritts Ford is the recommended vendor for this purchase due to being the only dealer able to supply the City with vehicles for the model year 2023.

Additionally, Units 404, 413, 414, 420, 424, and 453 are proposed to be declared as surplus and made available for parts to support vehicles currently in service in the Police Department's fleet or for sale at auction. The vehicles identification information is as follows:

<i>Vehicle Year and Model</i>	<i>VIN</i>	<i>Mileage</i>	<i>Estimated Value</i>
2013 Ford Interceptor Utility	2FM5K8AR5DGB54384	114,065	\$7,000
2013 Ford Interceptor Utility	1FM5K8AR9DGB54386	144,623	\$7,000
2016 Ford Interceptor Utility	1FM5K8AT9FGA88310	135,573	\$7,000
2016 Ford Interceptor Utility	1FM5K8AR8HGB33455	129,691	\$7,000
2016 Ford Interceptor Utility	1FM5K8AR6HGB33453	121,272	\$7,000
2016 Ford Interceptor Utility	1FM5K8AR3HGB33457	123,142	\$7,000

FISCAL IMPACT: If authorized by the City Council, funding for the purchase of four black-and-white 2023 Ford Interceptor Utility vehicles for patrol use would result in an expenditure of \$209,005.80 from the Police Department Fiscal Year 2022-23 Budget from Equipment Replacement Fund Account No. 1750-4426-62020-400-00000.

The purchase of one 2023 Ford Interceptor Utility vehicle for administrative use would result in an expenditure of \$49,736.91 from the Police Department Fiscal Year 2022-23 Budget from COPS ELEAS Grant Account No. 1149-4421-62020-400-00000.

The purchase of one 2023 Ford Edge SE vehicle for investigative use would result in an expenditure of \$40,863.22 from the Police Department Fiscal Year 2022-23 Budget from COPS ELEAS Grant Account No. 1149-4425-62020-400-00000.

If approved by the City Council, an allocation of \$46,914.93 would be made from the Inflation Control Expenditure Fund to cover the unanticipated cost increases of the vehicles. The breakdown of cost increases is shown in the following table:

**Police Department Vehicle Purchase
Budgeted Versus Actual Costs**

<i>VEHICLES</i>	<i>BUDGETED</i>	<i>ACTUAL</i>	<i>SHORTFALL</i>
<i>Patrol (4)</i>	\$ 167,200.00	\$ 209,005.80	\$ 41,805.80
<i>Administrative (1)</i>	42,800.00	49,736.91	6,936.91
<i>Investigative (1)</i>	42,691.00	40,863.22	(1,827.78)
<i>TOTALS</i>	\$ 252,691.00	\$ 299,605.93	\$ 46,914.93

There would be no negative fiscal impact to the City as a result of declaring existing vehicles in the Police Department fleet as surplus and making them available for parts. However, the City could receive up to \$42,000 from the auction of said vehicles. Proceeds from the sales would be credited to the Inflation Control Expenditure Fund.

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

1. Authorize the purchase of five 2023 Ford Explorer Interceptor Utility vehicles and one Ford Edge SE from Fritts Ford for the Police Department fleet in the total amount of \$299,605.93.
2. Authorize a \$46,914.93 appropriation from the Inflation Control Expenditure Fund to cover the unanticipated cost increase of the vehicles.
3. Declare the six Ford Police Interceptor Utility vehicles as surplus and available for parts or for sale at auction.



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 3, 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 October 3, 2022; and the Payroll Documentations dated August 28, 2022, and September 11, 2022, and recommends their approval.

FISCAL IMPACT: The Warrant Register dated October 3, 2022, totals \$2,051,712.69.

The Payroll Documentation dated August 28, 2022 totals \$707,959.15 gross, with \$497,358.57 net being the total cash disbursement.

The Payroll Documentation dated September 11, 2022 totals \$1,003,097.08 gross, with \$695,852.00 net being the total cash disbursement.

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



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 3, 2022	FILE I.D.:	HSV043
SECTION:	CONSENT - AGREEMENTS	DEPT.:	HUMAN SVCS.
ITEM NO.:	1	PREPARER:	A. COLUNGA

SUBJECT: CONSIDER APPROVAL OF AGREEMENT NO. 22-92 WITH WESTERN UNIVERSITY OF HEALTH SCIENCES TO PROVIDE COLLEGE OF OSTEOPATHIC MEDICINE OF THE PACIFIC STUDENTS WITH CLINICAL AND EDUCATIONAL TRAINING AT THE MONTCLAIR MEDICAL CLINIC, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

REASON FOR CONSIDERATION: The City Council is requested to consider approval of Agreement No. 22-92 with Western University of Health Sciences (WesternU) to provide College of Osteopathic Medicine of the Pacific (COMP) students with clinical and educational training at the Montclair Medical Clinic.

A copy of proposed Agreement No. 22-92 is attached for City Council review and consideration.

BACKGROUND: From 1978 to 2021, the Montclair Medical Clinic, in partnership with Dr. James Lally and WesternU, served the community by offering physical examinations; general family practice care; referrals for low-cost laboratory, radiology and mammogram services; medication prescriptions; and limited gynecological services. The Montclair Medical Clinic was housed in the Recreation Center for over 30 years and in early 2017 the clinic was relocated inside the Montclair Community Health Center building at 5050 San Bernardino Street.

The Montclair evening clinic proudly served thousands of patients; however, due to the Affordable Care Act and the emergence of new local community health centers, patient numbers dwindled and Montclair evening clinic patients found affordable health care elsewhere. The Montclair evening clinic closed in late 2021.

Resulting from the City's deep-rooted partnership with WesternU, a new program to reinstate the Montclair Medical Clinic at the Recreation Center is being proposed where COMP students can provide patients with osteopathic manipulative medicine (OMM) — a set of techniques used by Doctors of Osteopathic Medicine (DOs) to diagnose, treat, and prevent illness and injury. When performing OMM, a DO moves a patient's muscles and joints using techniques including stretching, gentle pressure, and resistance. The OMM clinic will not provide patients with prescriptions or referrals.

FISCAL IMPACT: There would be no direct costs associated with the City Council's approval of Agreement No. 22-92. The OMM clinic would operate in the Recreation Center and require minimal use of supplies. The City Council approved funds in the budget for operation of the Medical Clinic for Fiscal Year 2022-23.

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 22-92 with WesternU to provide COMP students with clinical and educational training at the Montclair Medical Clinic, subject to any revisions deemed necessary by the City Attorney.

Clinical Affiliation Agreement

This Agreement, effective October 3, 2022 (“Effective Date”), is made by and between the City of Montclair (“City”) and Western University of Health Sciences (“WesternU”) for the purpose of affiliating to provide students of the College of Osteopathic Medicine of the Pacific at WesternU (“COMP”) with clinical education and training (the “Affiliation”). In consideration of the mutual covenants and conditions set forth in this agreement (“Agreement”), the parties agree as follows:

1. Description of Affiliation. The City owns and operates the Montclair Clinic located at 5111 Benito Street in Montclair, California (“Clinic”). The Clinic provides osteopathic manipulative care at low cost to individuals and families who have no medical insurance. During the term of this Agreement, the Clinic will serve as a clinical education and training site for second year or near completion of first year COMP students. The COMP students will participate in the medical care provided by physicians on the medical staff of the Clinic to patients of the Clinic. The COMP students’ clinical education and training shall include participation, under the direct supervision of a licensed physician, in the following medical services:

- a. Obtaining vital signs;
- b. Review of chief complaint;
- c. History of present illness;
- d. Review of current medications;
- e. Review of allergies, previous medical and surgical history;
- f. Review of family and social history;
- g. Brief focused review of systems based on chief complaint and on-going health issues;
- h. Focused exam based on chief complaint and on-going health issues;
- i. Assessment and plan based on chief complaint;
- j. Administration of osteopathic manipulative treatment (OMT) as appropriate under the supervision of the physician supervisor;
- k. Recommendations for specialty care as needed.

COMP and the City shall determine in advance the number of COMP students that the Clinic can accommodate, and the schedule for the clinical education and training of the COMP students.

2. WesternU’s Responsibilities.

a. WesternU is ultimately responsible for the medical education program, academic affairs, and the assessment of the COMP students.

b. WesternU shall provide and supervise qualified physicians to work at the Clinic and shall ensure that the physicians devote their utmost knowledge and best skill to the care of the Clinic’s medical patients.

c. WesternU shall provide medical direction and administration including, but not limited to, developing clinical practice guidelines. In addition, WesternU shall ensure that all clinical programs are in compliance with all applicable regulations.

d. WesternU shall designate a representative to coordinate the clinical education and training of the COMP students with the City. The representative shall be a faculty member who will be responsible for COMP student teaching and assessment provided pursuant to this Agreement.

e. WesternU shall advise the COMP students of their responsibility for complying with the rules and regulations of the Clinic, and the federal and state rules regarding the confidentiality of patient health information. WesternU shall advise the COMP students not to discriminate on the basis of actual or perceived race, religion, sex, national origin, age, handicap, or sexual orientation in the performance of the medical services.

f. Prior to permitting any COMP students access to any patients, WesternU shall obtain evidence from each student of an examination within the past 365 days to determine that he/she is free of active tuberculosis. In addition, each student shall provide WesternU evidence of immunity to Hepatitis B, Measles, Mumps, Rubella, and Varicella; and provide evidence that he/she is current on his/her TDAP vaccination.

g. WesternU shall provide instruction to the Clinic’s staff with respect to WesternU’s expectations regarding assessment of the COMP students at the Clinic.

h. WesternU may terminate a COMP student’s participation when, in its sole discretion, it determines that further participation by the student would no longer be appropriate. WesternU will notify the Clinic’s staff if such action is required.

3. City’s Responsibilities.

a. The City has a responsibility to maintain a positive, respectful, and adequately resourced learning environment at the Clinic so that sound educational experiences can occur. The Clinic will provide the COMP students and faculty with access to appropriate resources for medical student education including: (i) access to patients at the Clinic facilities in an appropriately supervised environment, in which the students can complete the COMP curriculum; (ii) student security badges or other means of secure access to patient care areas; (iii) access and required training for COMP students in the proper use of electronic medical records or paper charts, as applicable; (iv) computer access; and (v) secure storage space for medical students’ personal items when at the Clinic.

b. The City will retain full authority and responsibility for patient care and quality standards at the Clinic, and will maintain a level of care that meets generally accepted standards conducive to satisfactory instruction. While in the Clinic’s facilities, the COMP students will have the status of trainees; they are not to replace the Clinic staff; and are not to render unsupervised patient care and/or services. All services rendered by the COMP students must have educational value and meet the goals of the COMP medical education program. The Clinic

and its staff will provide such supervision of the educational and clinical activities as is reasonable and appropriate to the circumstances and to the student's level of training.

c. The Clinic staff will assist, upon request, WesternU in the assessment of the learning and performance of participating COMP students by completing assessment forms provided by WesternU and returned to WesternU in a timely fashion.

d. The Clinic will provide for the orientation of participating COMP students as to the Clinic's rules, regulations, policies, and procedures.

e. The Clinic agrees to comply with applicable state and federal workplace safety laws and regulations. If a COMP student is exposed to an infectious or environmental hazard or other occupational injury (e.g., needle stick) or is otherwise in need of medical care while at the Clinic, the Clinic staff, upon notice of such incident from the student, will provide any needed medical care. In the event that the Clinic does not have the resources to provide such emergency care, the Clinic will refer such student to the nearest emergency facility.

f. To the extent the Clinic generates or maintains educational records related to the participating COMP students, the Clinic agrees to comply with the Family Educational Rights and Privacy Act (FERPA) to the same extent as such laws and regulations apply to WesternU and shall limit access to only those employees or agents with a need to know. For the purposes of this Agreement pursuant to FERPA, WesternU hereby designates the Clinic as a school official with a legitimate educational interest in the educational records of the participating COMP students to the extent that access to WesternU's records is required by the Clinic to carry out the medical education and training of the COMP students at the Clinic.

g. The Clinic shall provide written notification to WesternU promptly if a claim arises involving a COMP student. The Clinic and WesternU agree to share such information in a manner that protects such disclosures from discovery to the extent possible under applicable federal and state peer review and joint defense laws.

h. The Clinic will resolve any situation in favor of its patients' welfare and restrict a COMP student to the role of observer when a problem may exist until the incident can be resolved by the staff in charge of the student or the student is removed. Clinic staff has the authority to make the determination that such a problem exists, and will notify WesternU's representative if such an action is required.

i. Clinic staff may immediately remove any COMP student from the premises and retains the right to suspend or terminate any COMP student's participation at the Clinic. Clinic staff will immediately notify WesternU if such an action is required, and the reasons for such action.

4. Insurance.

a. WesternU shall obtain and continuously maintain for itself, its employees and the COMP students (as applicable to the students): (i) professional liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million

Dollars (\$3,000,000) in the annual aggregate, (ii) general liability insurance with a combined single limit for bodily injury and property damage of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate, and (iii) workers' compensation insurance for its employees, covering its full liability as required under California state law. City shall be additional insureds on WesternU's general liability policy with regard to liability and defense of suits or claims arising out of the performance of this Agreement. WesternU shall provide City with certificates of insurance evidencing the required insurance coverage before commencement of the clinical education and training of any COMP student.

b. City shall obtain and continuously maintain for itself, its agents, employees, and volunteers, (other than the physicians and WesternU students) (i) professional liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate, (ii) general liability insurance with a combined single limit for bodily injury and property damage of at least One Million Dollars (\$1,000,000) per occurrence or claim and Three Million Dollars (\$3,000,000) in the annual aggregate, and (iii) workers' compensation insurance covering its full liability as required under California state law. WesternU shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of this Agreement. City shall provide WesternU with certificates of insurance evidencing the required insurance coverage before commencement of the clinical education and training of any COMP student.

5. Term. The term of this Agreement will commence on the Effective Date and continue for an initial term of twelve (12) months. At the expiration of the initial term, and on each annual anniversary of the term of this Agreement thereafter, this Agreement will automatically renew for an additional twelve-month (12-month) term unless and until any party provides the other parties written notice of its/his intent not to renew this Agreement at least sixty (60) days before the expiration of the then-current term.

6. Termination.

a. Any party may terminate this Agreement, without cause, by providing the other parties with at least ninety (90) days' prior written notice.

b. Any party may terminate this Agreement immediately upon the occurrence of any one of the following events:

- i. Breach of this Agreement by another party where the breach is not cured within thirty (30) calendar days after the non-breaching party/parties gives written notice of the breach to the breaching party; or
- ii. Failure by a party to maintain the insurance required under this Agreement.

c. Should notice of termination be given under this paragraph 7, COMP students already scheduled to train at the Clinic will be permitted to complete any previously scheduled clinical assignment at the Clinic.

7. Indemnification.

a. WesternU agrees to defend, indemnify and hold City, and their respective officers, agents, employees, and volunteers harmless against any and all third party claims, lawsuits, judgments, costs and expenses for bodily/personal injury (including death), property damage or other harm resulting or arising from the performance of this Agreement by WesternU's officers, agents, employees, volunteers, COMP students, subcontractors or independent contractors (hired by WesternU), except to the extent that City or their respective officers, agents, employees, and volunteers negligently or intentionally caused such claims, lawsuits, judgments, costs and expenses, damage or other harm. WesternU's obligation to defend City is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

b. City agrees to defend, indemnify and hold WesternU and their respective officers, agents, employees, and volunteers harmless against any and all third party claims, lawsuits, judgments, costs and expenses for bodily/personal injury (including death), property damage or other harm resulting or arising from the performance of this Agreement by City, or its officers, agents, employees, volunteers, subcontractors or independent contractors (hired by City), except to the extent that WesternU or their respective officers, agents, employees, volunteers, and COMP students negligently or intentionally caused such claims, lawsuits, judgments, costs and expenses, damage or other harm. City's obligation to defend WesternU is not contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

8. Non-Discrimination. The parties acknowledge that WesternU is subject to Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and the Americans with Disabilities Act, and the related regulations to each. Accordingly, City will cooperate with WesternU in the fulfillment of its obligations under these laws, City will reasonably cooperate with WesternU to ensure that the educational opportunities offered to WesternU students at Clinic are conducted in accordance with such requirements. Further, each party agrees that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, sex, national origin, disability, and other categories considered protected classes under law.

9. Proprietary Information. Each party agrees to maintain the confidentiality of all non-public information relating to the other party, its affiliates or any third party that may be disclosed by a party to the other party in connection with the performance of the obligations under this Agreement, and to use such information solely for the purposes of the Affiliation. Each party shall retain the entire right, interest and title to its proprietary information. No license under any patent, copyright, trademark, other intellectual property right is hereby granted or implied by the Affiliation. Upon any termination of this Agreement, each party shall (i) deliver to the other party all proprietary information of the other party, and (ii) make no further use of the other party's proprietary information.

17. No Third-Party Beneficiaries. No provision of this Agreement is intended to confer upon any person other than WesternU or the City any rights or remedies under this Agreement.

18. Compliance with Laws. The parties shall comply with all applicable laws, licensing requirements, ordinances, codes and regulations of federal, state and local governments, applicable to the performance of this Agreement.

19. Governing Law. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of California. Any litigation concerning this Agreement shall take place in the Superior Court of the County of San Bernardino, California.

AGREED AND ACCEPTED THIS THIRD DAY OF OCTOBER, 2022

CITY OF MONTCLAIR

By: _____
Name: Javier John Dutrey
Its: Mayor

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

WESTERN UNIVERSITY OF HEALTH SCIENCES

By: _____
Name: Paula M. Crone, DO
Its: Interim Provost and Chief Academic Officer



CITY COUNCIL AGENDA REPORT

DATE: OCTOBER 3, 2022 **FILE I.D.:** STA670N-1
SECTION: CONSENT - AGREEMENTS **DEPT.:** PUBLIC WORKS
ITEM NO.: 2 **PREPARER:** R. HOERNING

SUBJECT: CONSIDER AMENDING THE 2019-2024 CAPITAL IMPROVEMENT PROGRAM TO INCLUDE THE MILLS AVENUE STREET REHABILITATION PROJECT FROM HOLT BOULEVARD TO MORENO STREET

CONSIDER APPROVAL OF AGREEMENT NO. 22-99 WITH ANDREASEN ENGINEERING, INC. FOR PERFORMANCE OF SURVEYING, EVALUATION OF PEDESTRIAN CONNECTIVITY IMPROVEMENTS, AND PREPARATION OF SIDEWALK IMPROVEMENT PLANS FOR THE MILLS AVENUE STREET REHABILITATION PROJECT, SUBJECT TO ANY REVISIONS DEEMED NECESSARY BY THE CITY ATTORNEY

CONSIDER AUTHORIZING A \$30,000 APPROPRIATION FROM 2021 LEASE REVENUE BOND PROCEEDS FOR COSTS RELATED TO AGREEMENT NO. 22-99

CONSIDER AUTHORIZING A \$3,400 DESIGN SERVICES CONTINGENCY FOR THE MILLS AVENUE STREET REHABILITATION PROJECT

REASON FOR CONSIDERATION: The City Council is requested to consider taking actions related to the design of street improvements for Mills Avenue Street Rehabilitation Project from Holt Boulevard to Moreno Street. Amendments to the Capital Improvement Program, approval of agreements for professional services with the City, and appropriation of unbudgeted funds require City Council approval.

A copy of proposed Agreement No. 22-99 with Andreasen Engineering, Inc. is attached for City Council review and consideration.

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

On October 18, and November 10, 2021, the City Council held workshops to discuss infrastructure projects to be supported with 2021 Lease Revenue Bond (LRB) proceeds. The workshops outlined several street improvement projects and other infrastructure projects, including the Mills Avenue Street Rehabilitation Project.

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

A few years ago, the City added a Class II bicycle lane to Mills Avenue as part of its efforts to expand mobility options to the community. This bicycle enhancement has been effective and well-received by residents, which is a testament to the direction the City is headed with the proposed future transportation enhancements. As part of the project, the consultant will evaluate pedestrian connectivity gaps on Mills Avenue and provide options to eliminate any existing barriers for pedestrians.

The City solicited proposals from pre-qualified engineering firms for the survey and evaluation of pedestrian connectivity for the Mills Avenue Street Rehabilitation Project. The City received two proposals from TKE Engineering, Inc. and Andreasen Engineering, Inc. (Andreasen).

Andreasen has performed engineering services for many years for the City of Montclair in a satisfactory manner. They understand the work to be performed and have availability to perform the desired services. Staff is recommending Andreasen for this work because staff believes Andreasen is well suited to this project, and their fee is reasonable.

FISCAL IMPACT: The cost associated with Agreement No. 22-99 with Andreasen is \$26,600. Staff is requesting an additional \$3,400 appropriation as a contingency if additional work is required beyond the scope of services for a total request of \$30,000. Funds for this contract would be provided by 2021 Lease Revenue Bond Proceeds.

RECOMMENDATION: Staff recommends that the City Council take the following actions in relation to the Mills Avenue Rehabilitation Project:

1. Amend the 2019-2024 Capital Improvement Program to include the Mills Avenue Street Rehabilitation Project from Holt Boulevard to Moreno Street;
2. Approve Agreement No. 22-99 with Andreasen Engineering, Inc. for performance of surveying, evaluation of pedestrian connectivity improvements, and preparation of sidewalk improvement plans for the Project, subject to any revisions necessary by the City Attorney;
3. Authorize a \$30,000 appropriation from 2021 Lease Revenue Bond proceeds for costs related to Agreement No. 22-99; and
4. Authorize a \$3,400 design services contingency for the Project.

Infrastructure Fund Capital Project Funding Information

Project Name: Mills Avenue Street Rehabilitation Project

Project Details: Street Pavement Rehabilitation, Sidewalk and Striping Improvements

Preparation Date: September 12, 2022 Department: Public Works

Project No. (Assigned by Finance): _____ Contact/Ext.: Rosemary Hoerning. X446

Phase	Fiscal Years					Total	Fund/Program
	Prior Years	2019/2020	2020/2021	2021/2022	2022/2023		
Environmental							
Design					30,000.00	30,000.00	2021 Lease Revenue Bonds
R/W Acquisition							
Construction							2021 Lease Revenue Bonds
Total	0.00	0.00	0.00	0.00	30,000.00	30,000.00	

Approvals:

Department: _____ By: _____ Date: _____

Finance By: _____ Date: _____

City Council Date: _____

Revision Number: _____

Total Project Cost: 30,000.00

CITY OF MONTCLAIR

AGREEMENT FOR CONSULTANT SERVICES

MILLS AVENUE REHABILITATION PROJECT

THIS AGREEMENT is made and effective as of on October 4, 2022, 2022, between the City of Montclair, a municipal corporation ("City") and Andreasen Engineering, 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 October 5, 2022 and shall remain and continue in effect for a period of 9 months until tasks described herein are completed, but in no event later than June 30, 2022, unless sooner terminated pursuant to the provisions of this Agreement.

2. SERVICES

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

3. PERFORMANCE

Consultant shall at all times faithfully, 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 monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit A, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed **twenty six thousand six hundred dollars and zero cents (\$26,600)** 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 \$3,400. Any additional work in excess of this amount shall be approved by the City Council.

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

City disputes any of the Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

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

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

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

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant on a pro-rata basis the actual value of the work performed up to the time of termination, provided that the work performed is 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 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"), from third party claims, suits, demands, obligations, losses, direct damages, sums, including but not limited to all legal fees, reasonable costs of defense and litigation expenses (including reasonable legal fees, expert fees, including those of adverse parties imposed on or sought against the Indemnified Parties), arising directly out of any liability for personal injury, bodily injury to persons, , errors or omissions, , damage to or loss of property, or any other loss, damage, or injury to the extent arising out of the work to be performed by Consultant herein, caused directly the negligent acts or omissions, or intentional misconduct of Consultant, including its subcontractors, subconsultants, employees, agents, and other persons or entities for whom Consultant is legally liable.

(b) Contractual Indemnity. To the fullest extent permitted under California law, Consultant shall contractually indemnify, hold harmless the Indemnified Parties from and against third party claims for liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, direct losses, expenses, amounts for good faith settlement, including reasonable attorney's fees and costs, court costs, interest, defense costs, and expert witness fees and costs), to the extent arising directly out of, , the negligent 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 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, hold harmless the Indemnified Parties not apply to the extent such liability arises out of the negligence, willful misconduct, or other fault of the Indemnified Parties.

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

(d) City Lost or Damaged Property – Theft. Consultant further agrees to 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, City assumes no responsibility whatsoever for any property placed on the premises of City by Consultant. 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 to the extent caused by the negligence or intentional wrongdoing or other fault of Indemnified Parties.

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

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

10. INSURANCE

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

(a) Types of Required Coverages

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

- (1) Commercial General Liability: Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate total bodily injury, personal injury, and property damage.
- (2) Automobile Liability Insurance: Automobile Liability Insurance with coverage at least as broad as Insurance Services Office Form CA 0001 covering "Any Auto" (Symbol 1), including owned, non-owned and hired autos, or the exact equivalent, with minimum limits of \$2,000,000 for bodily injury and property damage, each accident. If Contractor owns no vehicles, auto liability coverage may be provided by means of a non-owned and hired auto endorsement to the general liability policy. Automobile liability insurance and endorsements shall be kept in force at all times during the performance of this Agreement.
- (3) Workers' Compensation: Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease.

- (4) Professional Liability: Professional Liability insurance with limit of not less than \$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 CG D3 81 09 15

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:

City Engineer
City of Montclair
5111 Benito
Montclair, CA 91763

To Consultant:

Eric J. Andreasen
Andreasen Engineering, Inc.
195 N. Euclid Avenue, Suite 101
Upland, CA. 91786

17. ASSIGNMENT AND SUBCONTRACTING

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

18. LICENSES

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

19. GOVERNING LAW

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

20. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further

force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

21. CONTENTS OF PROPOSAL

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

22. CONFIDENTIALITY

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

23. DISCRIMINATION

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

24. EFFECT OF PARTIAL INVALIDITY

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

25. CLAIMS AGAINST CITY

Consultant must comply with the claim procedures set forth in Government Code sections 900, *et. seq.*, and/or Montclair Municipal Code, Chapter 1.16, as applicable, prior to filing any lawsuit against the City. Such claims and any subsequent lawsuit based upon the claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by 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: _____
Name: Eric Andreasen
Title: Vice President

Attest:

By: _____
Andrea M. Myrick, City Clerk

Approved as to Form:

By: _____
Diane E. Robbins, City Attorney



ANDREASEN ENGINEERING, INC.

Civil Engineering • Land Surveying • Municipal Engineering

Rosemary Hoerning, P.E. PLS. MAP
City Engineering Consultant
5111 Benito Street
Montclair, CA 91763

August 5, 2022

Subject: Mills Avenue Rehabilitation Project

Reference: RFP Surveying and Engineering Project

Andreassen Engineering, Inc. (AEI) sincerely appreciates the opportunity to submit this proposal for professional Civil Engineering Services and Surveying in connection with the Mills Avenue Street Rehabilitation Project in the City of Montclair.

PROJECT OVERVIEW

AEI shall provide professional surveying and engineering services as part of the City's plan to Rehabilitate Mills Avenue from Holt Blvd. to the northerly City limits. As part of this effort AEI will along with city staff, want to make sure the street is safe for cars, pedestrians and bicyclists. A small section along the east side of Mills Avenue between approximately E. American Avenue (Pomona) and Palo Verde Street (Montclair) is substandard; the property addresses are 9595, 9587, 9583 and 9575.

The Project will consider three options to meet the City's goal of constructing sidewalk to provide continuous safe path of travel for pedestrians.

- 1) Ultimate right of way/sidewalk design alignment;
- 2) Minimum right of way/sidewalk design;
- 3) Intermediate right of way requirement/sidewalk design (discussion with City staff).

Please give me a call if you have any questions or require clarification of any aspect of this Proposal. We look forward to working with you on this project.

Respectfully Submitted:
Andreassen Engineering, Inc.

Eric J. Andreassen, PLS
Vice President

SCOPE OF SERVICES

AEI agrees to perform professional services for the City of Montclair as set forth in Appendix A, attached herewith.

Design Development (DD) Phase to include:

1. Site Visit/Field Inventory to review existing improvements along with project design opportunities and site constraints.
2. Provide surveying services from the street centerline to the existing building locations; obtain existing topographical features (curbs, driveways, street lights, fire hydrants, power poles, walls/fences etc.), perform street cross sections to obtain spot elevations.
3. Collect existing utility maps from the City to be included in base mapping.
4. Develop base plans showing the three options for consideration at a scale of 1" = 10' scale, on 24" x 36" city standard sheets.
5. Prepare and provide an outline of the pros and cons of the three options for the City to consider.
6. Attend meeting with City Staff to review and consider each option and address any and all questions that may arise prior to preparing construction documents. *(if requested)*

Construction Document (CD) Phase to include:**Concept Plans (35%)**

1. Develop existing cross sections to be used in conjunction with the new designs.
2. Incorporate the agreed upon items after discussions with the City of Montclair.
3. Submit 35% concept plans and cross sections to City for their review.

Construction Documents (90%)

1. Design and draft (CAD) street improvement plan of Mills Avenue at the scale of 1" = 20', that will incorporate design street cross sections, add construction notes and details. The plans will include improvements related to demolition, curb/gutter, sidewalk, drive approach and driveways to join onsite, pavement construction and rehabilitation.
2. Review and "redline" City provided technical specifications.
3. Provide coordination and support with any sub-consultants in the preparation of construction plans.
4. Prepare engineering quantities.
5. Submit 90% construction plans to City for their review.

Construction Documents (100%)

1. Address plan review comments.
2. Resubmit 100% construction plans to City for incorporation into City Rehabilitation Project Plans.
3. Upon City approval prepare signed and stamped Mylar's.



Optional Items:

- 1. Prepare legal description and plats for additional right of way for these four properties.
- 2. Prepare legal description and plats for temporary construction easement for these four properties.

Fees and Terms

Services described above shall be provided for in accordance with the terms and conditions in Appendix A Consultant Agreement for Civil Engineering Services attached hereto and which is incorporated and made a part of this Agreement by reference. We estimate the following fees as follows:

A. Design Development (DD) Phase:	\$8,400.00
B. Construction Documents (CD) Phase:	<u>\$10,200.00</u>
Total Fee:	<u>\$18,600.00</u>
Optional Item (Hourly with an Estimated Fee)	\$8,000.00

AUTHORIZATION

We have carefully reviewed the Consultant Agreement dated August 5th 2022 by Andreasen Engineering, Inc.

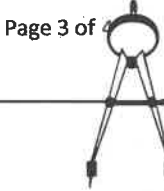
We do hereby authorize Andreasen Engineering, Inc. to commence work as indicated within the terms and conditions of this Agreement.

ANDREASEN ENGINEERING, INC.

CITY OF MONTCLAIR


 Eric J. Andreasen, Vice President

 Signature Date
 Print Name



**APPENDIX A
CONSULTANT AGREEMENT FOR CIVIL ENGINEERING SERVICES**

This agreement is made on the 5th day of August 2022, by and between **CITY OF MONTCLAIR (CLIENT)** and **ANDREASEN ENGINEERING, INC. (CONSULTANT)**.

RECITALS

- CLIENT is engaged in developing the street improvement plans for the rehabilitation of Mills Avenue from Holt Blvd. to the northerly City limits, in the City of Montclair.
- CONSULTANT is a California Corporation that employs fully qualified and licensed engineers and surveyors, who hold valid California State Licenses, along with fully qualified designers and draftsmen.
- CLIENT wishes to retain CONSULTANT to perform certain engineering and surveying services with respect to the project, and CONSULTANT wishes to perform such services on an hourly basis as set forth herein.
- DOCUMENTS:
Consultant Agreement, Scope of Services, Estimated Cost

AGREEMENT BETWEEN CLIENT AND CONSULTANT

1. This agreement shall be binding upon heirs, executors, administrators, successors and assigns of CLIENT and CONSULTANT.
2. Either the CLIENT or CONSULTANT shall not assign this agreement without prior written consent by the other.
3. This agreement shall be governed by and construed in accordance with the laws of the State of California.
4. CONSULTANT shall only act as an advisor in all governmental relations.
5. CONSULTANT makes no representation concerning soil conditions, and he is not responsible for any liability that may arise out of the making or failure to make soil surveys, subsurface soil tests, analyses or recommendations.
6. CLIENT agrees not to use or permit any other person to use plans, drawings, or other work product prepared by CONSULTANT, without CONSULTANT receiving their signed release and which plans, drawings, or other work product are not signed, and stamped or sealed by CONSULTANT.
7. CONSULTANT will work on a PROFESSIONAL FEE basis; all additional services will be based upon our current hourly rates of \$195.00 per hour for Principals, \$175.00 per hour for Registered Engineer, \$155.00 per hour for all CAD and \$295.00 per hour for a two-man Survey crew with all electronic equipment and supplies. These rates apply through October 2023, at which time rates are subject to an increase of approximately 5% due to our Union Labor contract.
8. CONSULTANT will bill monthly at the percentage of work completed in the prior month. All billing is due upon receipt, unless otherwise specified in this agreement. If the bill is not paid within 30 days CONSULTANT reserves the right to give priority to working on other jobs where the bills are current and also reserves the right to execute item 9.
9. If CLIENT fails to pay CONSULTANT within thirty (30) days after invoices are rendered, CLIENT agrees CONSULTANT shall have the right to charge a 1% per month late fee and to consider such default in payment a material breach of this entire agreement, and, upon written notice, the duties, obligations, and responsibilities of CONSULTANT under this agreement are terminated. In such event, CLIENT shall promptly pay CONSULTANT for all fees, charges, and services provided by CONSULTANT.
10. CLIENT agrees that the monthly billings from CONSULTANT to CLIENT are correct, conclusive, and binding on CLIENT unless CLIENT, within ten (10) days from the date of receipt of such billings, notifies CONSULTANT in writing of alleged inaccuracies, discrepancies, or errors in billing.
11. CLIENT agrees to pay for all reproductions, courier services, and united parcel /federal express charges provided to CLIENT by CONSULTANT at cost plus 10% (not included in estimated fee). All secretarial services by CONSULTANT are at no cost to the CLIENT.
12. CONSULTANT agrees to maintain in force continuously during the life of this agreement, Errors and Omissions Insurance in an amount not less than \$1,000,000, Workers Compensation Insurance in an amount not less than \$1,000,000 for each accident, and General Liability Insurance on an assurance basis in an amount not less than \$1,000,000 for each occurrence.





CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 3, 2022	FILE I.D.:	STB300-17
SECTION:	CONSENT - RESOLUTIONS	DEPT.:	FINANCE
ITEM NO.:	1	PREPARER:	C. GRAVES
SUBJECT:	CONSIDER ADOPTION OF RESOLUTION NO. 22-3378 AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH CHARGES		

REASON FOR CONSIDERATION: Staff has identified 129 sewer and trash accounts in the even-numbered-month billing cycle that are more than three billing periods delinquent. Pursuant to Montclair Municipal Code Chapter 1.12, these properties are subject to lien.

BACKGROUND: Ordinance No. 02-815 authorizes the placement of liens on properties on which delinquent civil debts have accrued and makes property owners responsible for delinquent sewer and trash charges accrued after the effective date of the Ordinance (March 1, 2002) for accounts in tenants' names. Prior to the City Council's adoption of Ordinance No. 02-815, property owners were responsible for only those accounts in their own names.

FISCAL IMPACT: Recoverable amount is \$40,278.41, plus \$2,580.00 for release of lien fees, plus \$6,450.00 in lien fees, for a total of \$49,308.41.

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 22-3378 authorizing placement of liens on certain properties for delinquent sewer and trash charges as listed on Exhibit A of said Resolution.

RESOLUTION NO. 22-3378

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AUTHORIZING PLACEMENT OF LIENS ON CERTAIN PROPERTIES FOR DELINQUENT SEWER AND TRASH ACCOUNTS

WHEREAS, Chapter 1.12 of the Montclair Municipal Code authorizes the City to place liens on properties on which delinquent civil debts have accrued; and

WHEREAS, all owners of property in the City of Montclair were notified about the adoption of Ordinance No. 02-815 authorizing placement of liens on properties on which delinquent civil debts have accrued; and

WHEREAS, it has been determined that there are 129 sewer and/or trash accounts on which there are delinquencies in excess of 90 days; and

WHEREAS, the owners of these properties have received regular billing statements and late notices since the onset of such delinquencies; and

WHEREAS, the owners of these properties were notified on September 1, 2022, that their delinquent accounts are subject to causing a lien to be placed on their properties for settlement of such delinquencies; and that such liens would be considered for approval by the Montclair City Council on Monday, October 3, 2022.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair approves the placement of liens on the properties and in the amounts specified in Exhibit A, entitled *Report of Delinquent Civil Debts - October 2022*, attached hereto.

BE IT FURTHER RESOLVED that the City Clerk is authorized to provide the San Bernardino County Auditor/Controller-Recorder with the documents required to cause such liens to be placed.

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. 22-3378 was duly adopted by the City Council of said city and was approved by the Mayor of said city at a regular meeting of said City Council held on the XX day of XX, 2022, and that it was adopted by the following vote, to-wit:

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

Andrea M. Myrick
City Clerk

**Exhibit A to Resolution No. 22-3378
Report of Delinquent Civil Debts - October 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4255	3rd Street	Residential	308.44	20.00	50.00	378.44
11225	Ada Avenue	Residential	294.30	20.00	50.00	364.30
10207	Amherst Avenue	Residential	261.83	20.00	50.00	331.83
11141	Amherst Avenue	Residential	294.48	20.00	50.00	364.48
11151	Amherst Avenue	Residential	294.33	20.00	50.00	364.33
4517	Arrow Hwy	Residential	412.69	20.00	50.00	482.69
5512	Arrow Hwy #D	Residential	262.26	20.00	50.00	332.26
5512	Arrow Hwy #F	Commercial	201.91	20.00	50.00	271.91
4740	Bandera Street	Multifamily	1,288.93	20.00	50.00	1,358.93
5071	Bandera Street	Residential	252.12	20.00	50.00	322.12
10145	Bel Air Avenue	Residential	294.48	20.00	50.00	364.48
10190	Bel Air Avenue	Senior	370.52	20.00	50.00	440.52
10205	Bel Air Avenue	Residential	488.71	20.00	50.00	558.71
5214	Belvedere Way	Residential	498.48	20.00	50.00	568.48
5218	Belvedere Way	Residential	275.55	20.00	50.00	345.55
5219	Belvedere Way	Residential	323.46	20.00	50.00	393.46
10376	Benson Avenue	Multifamily	299.06	20.00	50.00	369.06
5011	Birch Street	Residential	225.02	20.00	50.00	295.02
11419	Brunswick Lane	Residential	283.10	20.00	50.00	353.10
11452	Brunswick Lane	Residential	287.03	20.00	50.00	357.03
11372	Buckskin Avenue	Residential	229.37	20.00	50.00	299.37
10437	Camarena Avenue	Residential	309.06	20.00	50.00	379.06
8953	Camulos Avenue	Residential	261.83	20.00	50.00	331.83
10234	Camulos Avenue	Residential	302.30	20.00	50.00	372.30
10259	Camulos Avenue	Residential	294.48	20.00	50.00	364.48
11409	Cannery Row	Residential	315.05	20.00	50.00	385.05
4924	Canoga Street	Residential	294.48	20.00	50.00	364.48
11178	Carrillo Avenue	Residential	294.48	20.00	50.00	364.48
11431	Chandler Lane	Residential	201.91	20.00	50.00	271.91
5159	Clair Street	Residential	290.63	20.00	50.00	360.63
10164	Coalinga Avenue	Residential	294.47	20.00	50.00	364.47
10247	Coalinga Avenue	Residential	257.96	20.00	50.00	327.96
10276	Coalinga Avenue	Residential	307.22	20.00	50.00	377.22
11148	Coalinga Avenue	Residential	294.45	20.00	50.00	364.45
11465	Cobblestone Lane	Residential	217.41	20.00	50.00	287.41
5222	Coventry Way	Residential	312.42	20.00	50.00	382.42
11476	Cumberland Lane	Residential	328.93	20.00	50.00	398.93
11461	Dartmouth Lane	Residential	201.91	20.00	50.00	271.91
10187	Del Mar Avenue	Residential	304.07	20.00	50.00	374.07
10190	Del Mar Avenue	Residential	294.48	20.00	50.00	364.48
10236	Del Mar Avenue	Residential	249.36	20.00	50.00	319.36
4512	Donner Court	Residential	264.03	20.00	50.00	334.03
11159	Essex Avenue	Residential	294.48	20.00	50.00	364.48
4705	Ewart Street	Residential	338.43	20.00	50.00	408.43

**Exhibit A to Resolution No. 22-3378
Report of Delinquent Civil Debts - October 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4790	Evart Street	Residential	293.19	20.00	50.00	363.19
4114	Faircove Court	Residential	345.49	20.00	50.00	415.49
4219	Fauna Street	Residential	283.48	20.00	50.00	353.48
4244	Fauna Street	Residential	335.90	20.00	50.00	405.90
4267	Fauna Street	Residential	301.27	20.00	50.00	371.27
4291	Fauna Street	Residential	294.48	20.00	50.00	364.48
4432	Fauna Street	Residential	267.39	20.00	50.00	337.39
4456	Fauna Street	Senior	264.37	20.00	50.00	334.37
4703	Fauna Street	Residential	294.47	20.00	50.00	364.47
4738	Fauna Street	Residential	282.48	20.00	50.00	352.48
4852	Fauna Street	Residential	294.41	20.00	50.00	364.41
5420	Fauna Street	Residential	427.39	20.00	50.00	497.39
8919-21	Felipe Avenue	Multifamily	588.94	20.00	50.00	658.94
8947-49	Felipe Avenue	Multifamily	249.36	20.00	50.00	319.36
4532	Flora Street	Residential	304.99	20.00	50.00	374.99
4639	Flora Street	Residential	306.95	20.00	50.00	376.95
4660	Flora Street	Residential	294.47	20.00	50.00	364.47
4932	Flora Street	Residential	323.85	20.00	50.00	393.85
5051	Flora Street	Residential	449.66	20.00	50.00	519.66
5370	Flora Street	Residential	412.69	20.00	50.00	482.69
5382	Flora Street	Residential	212.69	20.00	50.00	282.69
10253	Fremont Avenue	Residential	294.47	20.00	50.00	364.47
10287	Fremont Avenue	Residential	323.85	20.00	50.00	393.85
10945	Fremont Avenue	Multifamily	217.58	20.00	50.00	287.58
11049	Fremont Avenue	Residential	247.16	20.00	50.00	317.16
10149	Galena Avenue	Residential	294.47	20.00	50.00	364.47
4103	Howard Street	Residential	294.48	20.00	50.00	364.48
4341	Howard Street	Residential	294.47	20.00	50.00	364.47
4597	Howard Street	Residential	287.37	20.00	50.00	357.37
4854	Howard Street	Residential	287.95	20.00	50.00	357.95
4910	Howard Street	Residential	337.88	20.00	50.00	407.88
4992	Howard Street	Residential	366.57	20.00	50.00	436.57
10236	Kimberly Avenue	Residential	294.47	20.00	50.00	364.47
10244	Kimberly Avenue	Residential	306.18	20.00	50.00	376.18
11065	Kimberly Avenue	Residential	293.77	20.00	50.00	363.77
4671	Kingsley Street	Multifamily	260.36	20.00	50.00	330.36
5198	Kingsley Street	Multifamily	249.36	20.00	50.00	319.36
5476	Kingsley Street	Residential	294.48	20.00	50.00	364.48
4691-93	Kingsley Street	Multifamily	523.66	20.00	50.00	593.66
10360-62	Lehigh Avenue	Multifamily	588.96	20.00	50.00	658.96
4414	Mane Street	Residential	257.58	20.00	50.00	327.58
4428	Mane Street	Residential	288.45	20.00	50.00	358.45
4543	Mane Street	Residential	294.47	20.00	50.00	364.47
4595	Mane Street	Residential	261.83	20.00	50.00	331.83

**Exhibit A to Resolution No. 22-3378
Report of Delinquent Civil Debts - October 2022**

Street No.	Street	Account Type	Delinquency	Release of Lien Fee	Lien Fee	Total Lien Amount
4839	Mane Street	Residential	293.86	20.00	50.00	363.86
4846	Mane Street	Residential	275.95	20.00	50.00	345.95
8875	Maple Avenue	Residential	325.14	20.00	50.00	395.14
11336	Marquette Lane	Residential	201.91	20.00	50.00	271.91
11442	Marquette Lane	Residential	323.06	20.00	50.00	393.06
10189	Mills Avenue	Residential	298.24	20.00	50.00	368.24
10231	Mills Avenue	Residential	294.48	20.00	50.00	364.48
11458	Millstone Lane	Residential	308.40	20.00	50.00	378.40
5239	Monte Verde Street	Residential	261.83	20.00	50.00	331.83
10263	Monte Vista Avenue	Residential	371.16	20.00	50.00	441.16
10290	Monte Vista Avenue	Senior	310.36	20.00	50.00	380.36
11313	Monte Vista Avenue	Residential	254.29	20.00	50.00	324.29
10557	Mustang Circle	Senior	241.40	20.00	50.00	311.40
10163	Oak Glen Avenue	Senior	264.39	20.00	50.00	334.39
10176	Oak Glen Avenue	Senior	275.83	20.00	50.00	345.83
4555	Oakdale Street	Residential	235.47	20.00	50.00	305.47
4595	Oakdale Street	Residential	265.29	20.00	50.00	335.29
5171	Orchard Street	Senior	252.39	20.00	50.00	322.39
5422	Orchard Street	Residential	294.48	20.00	50.00	364.48
10154	Poulsen Avenue	Residential	298.83	20.00	50.00	368.83
10206	Pradera Avenue	Residential	294.48	20.00	50.00	364.48
4695	Rawhide Street	Residential	261.83	20.00	50.00	331.83
4833	Rawhide Street	Senior	319.63	20.00	50.00	389.63
8981	Rose Avenue	Commercial	201.91	20.00	50.00	271.91
4675	Saddleback Street	Residential	304.67	20.00	50.00	374.67
5049	Saddleback Street	Residential	285.43	20.00	50.00	355.43
11020	San Pasqual Avenue	Residential	294.48	20.00	50.00	364.48
11083	San Pasqual Avenue	Residential	317.44	20.00	50.00	387.44
10170	Saratoga Avenue	Residential	392.95	20.00	50.00	462.95
11011	Stallion Avenue	Residential	294.97	20.00	50.00	364.97
4779	State Street	Residential	295.54	20.00	50.00	365.54
10289	Tudor Avenue	Residential	294.48	20.00	50.00	364.48
10115	Vernon Avenue	Residential	412.69	20.00	50.00	482.69
10192	Vernon Avenue	Residential	474.14	20.00	50.00	544.14
10236	Vernon Avenue	Residential	412.69	20.00	50.00	482.69
4198	Via Viola	Residential	322.90	20.00	50.00	392.90
11043	Wesley Avenue	Residential	295.57	20.00	50.00	365.57
11053	Wesley Avenue	Residential	294.64	20.00	50.00	364.64
11178	Whitewater Avenue	Residential	294.41	20.00	50.00	364.41
11263	Whitewater Avenue	Residential	314.67	20.00	50.00	384.67
4515	Yosemite Drive	Residential	294.48	20.00	50.00	364.48
		Total:	\$40,278.41	\$2,580.00	\$6,450.00	\$49,308.41



CITY COUNCIL AGENDA REPORT

DATE: OCTOBER 3, 2022

FILE I.D.: PER597

SECTION: BUSINESS ITEMS

DEPT.: ADMIN. SVCS.

ITEM NO.: A

PREPARER: M. RICHTER

SUBJECT: CONSIDER ADOPTION OF RESOLUTION NO. 22-3380 MAKING CERTAIN FINDINGS FOR AN EXCEPTION TO THE 180-DAY WAIT PERIOD PURSUANT TO GOVERNMENT CODE SECTIONS 7522.56, 3301, AND 21221 (H) WITH AUTHORIZATION TO HIRE DAVID TAYLOR INTO THE PART-TIME, TEMPORARY RETIRED ANNUITANT POSITION OF POLICE OFFICER

CONSIDER AUTHORIZING A \$32,155 APPROPRIATION FROM THE FY 2022-23 POLICE DEPARTMENT PERSONNEL BUDGET TO FUND THE PART-TIME, TEMPORARY RETIRED ANNUITANT POSITION OF POLICE OFFICER

REASON FOR CONSIDERATION: The Pension Reform Act of 2012 prohibits employers from hiring retired annuitants within 180 days of their retirement. However, retired public safety officers as defined in California Government Code (GC) §3301 (peace officer) who will perform peace officer retired annuitant work is provided as an exception to this 180-day rule.

The City Council is requested to consider adoption of Resolution No. 22-3380 authorizing the hiring of David Taylor into the part-time and temporary retired annuitant position of Police Officer. A copy of proposed Resolution No. 22-3380 is attached for City Council's review and consideration.

BACKGROUND: Police Officer David Taylor was initially hired on January 7, 1991 and retired effective July 2, 2022 after a 31-year career with the City of Montclair. During his tenure, Officer Taylor had several assignments including Special Enforcement Team (SET), Detective, School Resource Officer, and Background Investigator. In 2012 he was selected as the Department's Officer of the Year. In his assignment to the Background Unit as a Background Investigator, Officer Taylor handled numerous background investigations quickly and efficiently. With his experience, he is well versed in the POST requirements as well as department policies and procedures. Because of his skills of being attentive, thorough, and detail-oriented, the Police Department would like to hire Officer Taylor back in the Department as a retired annuitant assigned to the Backgrounds Unit. In addition, he may also be assigned twice annually to speak with Ontario-Montclair School District (OMSD) school staff regarding school safety issues.

Pursuant to GC §7522.56(b), "[a] retired person shall not serve, be employed by, or be employed through a contract directly by, a public employer in the same public retirement system from which the retiree received the benefit without reinstatement from retirement, except as permitted by this section." GC §7522.56(c) then provides the following exception: "A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by [CalPERS] upon appointment by the appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of a limited duration."

GC §7522.56(f) provides: “A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement unless [...] (1) The employer certifies the nature of the employment and the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.” In addition, there is an exception to the 180-day wait period requirement if the employee is a retired firefighter or retired public safety officer (peace officer) as defined by GC §3301 who will perform regular firefighter or peace officer functions. The City is currently recruiting for Police Officers and at this time it is critical that, with Officer Taylor’s 31-year career and his depth of knowledge about the Montclair Police Department and the community, we bring his expertise back to assist in the Background Unit.

Finally, Mr. Taylor has not accepted a retirement incentive upon his retirement, as doing so would have made him ineligible for this consideration as outlined in GC §7522.56(g).

Officer Taylor’s employment will be on a temporary, part-time basis and will remain at or below the 960 permitted hours per fiscal year a retired annuitant may work pursuant to GC §7522.56(d). His specialized skills are needed in the Background Unit to ensure that employee background checks will be completed in a timely manner. It is anticipated that this process will last through the duration of the current fiscal year and continue into the 2023–2024 Fiscal Year. Also, pursuant to Section 7522.56(d), his pay may not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule equal to an hourly rate. The maximum base salary for his position is \$7,741, and the hourly equivalent is \$44.66.

FISCAL IMPACT: The fiscal impact associated with hiring Officer Taylor as a retired annuitant is estimated to be \$32,155 for the remainder of Fiscal Year 2022–2023 if he works 20 hours per week from October 3, to June 30, 2022, which is approximately 240 hours less than the 960 hours authorized by GC §§7522.56(d) & 21221(h). The Fiscal Year 2023–2024 Police Department budget will provide funds for this retired annuitant position if it is still needed. It is also possible OMSD will help fund this retired annuitant position for Officer Taylor.

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

1. Adopt Resolution No. 22–3380 making certain findings for an exception to the 180-day wait period by pursuant to GC §§7522.56, 3331, and 21221(h) with authorization to hire David Taylor into the part-time, temporary retired annuitant position of Police Officer.
2. Authorize a \$32,155 appropriation from the FY 2022–23 Police Department Personnel Budget to fund this retired annuitant position.

RESOLUTION NO. 22-3380

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR MAKING CERTAIN FINDINGS FOR AN EXCEPTION TO THE 180-DAY WAIT PERIOD PURSUANT TO GOVERNMENT CODE SECTIONS 7522.56, 3301, AND 21221

WHEREAS, in compliance with Government Code Section 7255.565, the City of Montclair must provide the California Public Employees Retirement System (CalPERS) this certification resolution when hiring a retiree before 180 days have passed since his or her retirement; and

WHEREAS, David Taylor, CalPERS ID No. 4289206751, retired from the City of Montclair in the position of Police Officer effective July 2, 2022; and

WHEREAS, post-retirement employment of a public safety officer as defined in Government Code Section 3301 allows this can be the exception to begin earlier than 180 days after the retirement date, and

WHEREAS, Section 7522.56 provides that this exception to the 180-day wait period shall not apply if the retiree accepts any retirement-related incentive; and

WHEREAS, the Montclair City Council hereby appoints David Taylor as an extra help Retired Annuitant with the title of Police Officer to work in the Background Unit under Government Code Sections 7522 & 21221 effective October 3, 2022; and

WHEREAS, the entire employment agreement, contract, or appointment document between David Taylor and the City of Montclair has been reviewed by the body and is attached herein as "Exhibit A"; and

WHEREAS, no matters, issues, terms, or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum monthly base salary for the Police Officer Position is \$7,741 and the hourly equivalent is \$44.66, and the minimum monthly base salary for the position is \$6,369 and the hourly equivalent is \$36.74; and

WHEREAS, because Mr. Taylor retired at Step "E" of the Police Officer Position, the hourly rate to be paid to David Taylor will be \$44.66; and

WHEREAS, David Taylor has not and will not receive any other benefit, incentive, compensation in lieu of benefit, or other form of compensation in addition to this hourly rate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Montclair hereby certifies the nature of the appointment of David Taylor as described herein and detailed in the attached employment agreement/contract/appointment document and that this appointment is necessary to ensure there is not a stoppage or slowdown in the Backgrounds Unit of the Police Department.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that Resolution No. 22-3380 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 Myrick
City Clerk



EXHIBIT "A" TO
RESOLUTION NO. 22-3380
MEMORANDUM

Date: October 3, 2022
To: Edward C. Starr, City Manager
From: Marcia Richter, Assistant City Manager/Director of Human Services
Subject: **PERSONNEL AUTHORIZATION: REQUEST TO HIRE DAVID TAYLOR INTO THE PART-TIME, TEMPORARY RETIRED ANNUITANT POSITION OF POLICE OFFICER**

On July 2, 2022, Police Officer David Taylor retired from the City of Montclair after a 31-year career. Officer Taylor's deep level of experience, knowledge, and professionalism are needed to assist the Police Department in the Backgrounds Unit. The Pension Reform Act of 2012 prohibits employers from hiring retired annuitants within 180 days of their retirement. However, subsequent legislation provides for an exception to the 180-day wait period under specific conditions; *i.e.*, the California Public Employees' Retirement System (CalPERS) requires the City Council adopt a resolution to allow for an exception to the 180-day wait period to hire a retired employee for temporary, part-time employment during the wait period. In addition CalPERS allows a public safety officer as defined by Government Code §3301 be allowed to begin earlier than 180 days after their retirement date.

Because of Officer Taylor's specialized skills and being well versed in the POST requirements, and department policies and procedures the Police Department would like to hire him back as a retired annuitant. It is anticipated that his employment as a retired annuitant will last the duration of the remaining 2022-2023 fiscal year and continue into the 2023-2024 fiscal year. Also, pursuant to Section 7522.56(d), his pay may not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay scheduled equal to an hourly rate. The maximum base salary for his position is \$7,741, and the hourly equivalent is \$44.66. It is anticipated he will work up to 20 hours per week and no more than 960 hours for the remaining of this current fiscal year.

California Government Code § 7522.56(f)(1) provides: "A retired person shall not be eligible to be employed pursuant to this section for a period of 180 days following the date of retirement unless... [t]he employer certifies the nature of the employment and the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting. On October 3, 2022, the City Council will consider Resolution No. 22-3380 certifying the need to rehire Officer Taylor into this part-time, temporary Police Officer position.



October 3, 2022

Page 2 of 2

If the City Council adopts Resolution No. 22-3380, Officer Taylor will be hired into the part-time, temporary retired annuitant Police Officer position effective October 3, 2022. This Personnel Authorization shall serve as the appointment document between Officer Taylor and the City of Montclair, which shall be attached as Exhibit A for City Council's consideration of Resolution No. 22-3380.

Therefore, on consideration that the City Council adopts Resolution No. 22-3380 on October 3, 2022, authorization is being requested to hire Officer Taylor as a retired annuitant into a temporary, part-time position of Police Officer effective October 3, 2022, at the rate of \$44.66/hour as a retired annuitant.

C: Director of Finance Kulbeck
Payroll Analyst Lew
Employment & Personnel Coordinator Kresback
Personnel File



CITY COUNCIL AGENDA REPORT

DATE:	OCTOBER 3, 2022	FILE I.D.:	CYC320
SECTION:	RESPONSE	DEPT.:	CITY MGR.
ITEM NO.:	A	PREPARER:	C. OROZCO
SUBJECT:	CONSIDER RECEIVING AND FILING THE RESPONSE TO CITY COUNCIL INQUIRY REGARDING COMMERCIAL CANNABIS COMMUNITY BENEFITS FUNDING AND SOCIAL EQUITY PROGRAMS		

REASON FOR CONSIDERATION: At the August 1, 2022 meeting of the City Council, a request was made to report on potential processes for a community benefits funding program provided through a commercial cannabis ordinance.

Specifically, information was requested on how other municipalities are implementing community benefits programs, with the objective that information regarding those programs could be integrated into a Montclair commercial cannabis program in the event that such a program receives approval of Montclair voters and the City Council. City Council Members also expressed interest in social equity-related programs.

BACKGROUND: Local government agencies in California developing and adopting commercial cannabis programs sometimes incorporate into their respective ordinances community benefit programs that support charitable/non-profit causes, public works projects, educational programs and/or community activities and social equity programs that support affirmative hiring and wage practices.

Montclair's draft commercial cannabis ordinance, Ordinance No. 19-982, contains elements of a community benefits program and social equity components:

- Section 4.07.090, subsection 3, paragraph J (page 113) requires, as part of a Business Plan element, that each applicant for a commercial cannabis license submit a Community Engagement and Investment Plan for the purpose of investing in community-oriented programs including, but not limited to, educational, charitable, anti-homeless, and anti-drug programs. The ordinance provides that City staff, as part of the regulatory development process, would develop procedures, guidelines and requirements related to the Community Engagement and Investment Plan that each licensee would be required to follow.
- Section 4.07.090, subsection 3, Paragraph K (page 113) requires submission of a Fair Work Compensation Plan identifying a schedule of fair and livable wages and benefits to be provided for each employee hired by the applicant.
- Section 4.07.100, subsection 9 (pages 135-137) provides for establishing a social equity program. The National Academy of Public Administration defines social equity as "the fair, just and equitable management of all institutions serving the public directly or by contract; and the fair and equitable distribution of public services, and implementation of public policy; and the commitment to promote fairness, justice and equity in the formation of public policy." In theory and practice, social equity programs should aid an individual's success by creating an even playing field and providing tools for self-empowerment. Ultimately, this gives an individual the freedom to contribute more greatly to their community,

and therefore to the broader society. Within the structure of commercial cannabis programs, social equity seeks to encourage participation in the cannabis industry by people from communities that have been disproportionately impacted by cannabis prohibition and enforcement programs, and to positively impact those communities. The California Cannabis Industry Association's (CCIA) Diversity, Inclusion and Social Equity (DISE) Committee's [Accountability Report](#) has found that, for the most part, social equity programs in the state are struggling to fulfill their mission.

- Section 4.07.100, subsection 10 (pages 137–138) provides for local hiring preference programs; and
- Section 4.07.100, subsection 11 (pages 138–139) provides for worker retention programs.

Each of the above sections of draft Ordinance No. 19–982 provide for City staff development of a regulatory scheme, with terms incorporated into the licensing agreement between the City and the licensee.

Community Benefits Program

Under general guidelines, a community benefits program may include, but is not limited to, the following:

- In-kind donations;
- Sponsorship of community events;
- Financial support, or otherwise, for special community events/programs such as fairs, afterschool activities, youth center programs including City-operated programs, Boys and Girls Clubs programs, and/or local school programs and activities, whether public or private;
- School athletic programs;
- School clubs;
- Community centers;
- Homeless shelters;
- Senior centers and/or senior living facilities;
- Parks and recreation programs; and/or
- Charitable organizations.

Typically, contribution programs directed at any one of the above groups or activities are structured as voluntary; however, in the merit review and selection process for the issuing of commercial cannabis licenses, applicants may receive weighted advantage for the quality of their community benefits plan, including the fiscal amount of contributions. Furthermore, because licensing is renewable annually, community benefit programs usually remain as an annual part of the approval or re-licensing process.

Due to the restrictions placed on local governments in California related to the imposition of taxes without voter consent, City staff is unaware of any local agency in the state that imposes a mandatory, set fee requirement on commercial cannabis

business licensees for community benefit contribution purposes—to do so would likely be interpreted by a court of competent jurisdiction as an illegal tax.

Community benefit contributions that are part of a commercial cannabis application program are encouraged through a point distribution system that is part of a merit selection process; i.e., applicants that meet certain threshold targets for community benefit contributions receive points that move them up on a merit scale for selection as a licensee—for example, community benefit contributions of one percent of gross receipts may achieve a specified point allocation on a merit scale for points distribution and license selection. Thereafter, community benefit contribution programs remain as part of the annual application process.

Due to the volatile nature of the commercial cannabis marketplace in California, and except for commercial cannabis business tax ranges approved by the electorate, the City Council, as part of any commercial cannabis ordinance, should consider establishing economic fee components such as license fees, excise taxes, and value-weighted community benefit contributions through a resolution process, not through ordinance adoption, thereby building in flexibility to accommodate the dynamic and fluctuating changes (both up and down) within the commercial cannabis industry.

In some states, other than California, a number of municipalities have established mandatory community benefit contributions as a percentage of gross receipts, with fees going toward the respective agency's general fund for public safety, parks, maintenance and general operations. This methodology potentially bypasses the need for a commercial cannabis business tax, while still committing funds to general government purposes. As stated above, however, in California a mandatory contribution for the stated purposes would likely be considered an unauthorized tax in violation of Proposition 218's prohibition against taxes not approved by the electorate.

Separate from any future commercial cannabis-related community benefits program, Montclair currently operates a community benefits funding program through the Montclair Community Activities Commission (CAC). The CAC annually conducts hearings and recommends to the City Council the award of community benefit funds to qualifying non-profit organizations.

As it relates to a community benefits program using funds donated by licensed commercial cannabis businesses, one potential local option is for Montclair to use the CAC as an oversight agency for distribution of funds. For example, under the Community Engagement Investment Program, the program could function as follows:

- a. Applicant: Applicant prepares and submits to the City a Community Engagement and Investment Plan (CEIP) detailing the applicant's proposed program of monetary and/or in-kind contributions to non-profit entities in Montclair (or other eligible programs, activities and/or projects) as defined by the City. The value of the contribution may be point-ranked on a merit scale based on the quality of the plan and/or the amount of the contribution; e.g., for every \$10,000 contribution, the applicant would receive one point toward achieving a maximum point total for receipt of a commercial cannabis license. Effectively, an applicant's CEIP may be a determinate factor in the selection of the applicant for a commercial cannabis business license.

- b. Licensee: Applicants selected to receive a commercial cannabis license would annually prepare and submit a renewed CEIP as part of the annual commercial cannabis license renewal program. Annual participation in the CEIP program would be a determinate factor in license renewal, and in establishing a longer-term licensing period for the licensee; e.g., annual participation in the CEIP, and the amount of the CEIP contribution may provide for biennial, triennial or quadrennial renewal of a license holder's commercial cannabis business license, vis-à-vis annual renewal of the license. Under this scenario, the licensee has assurance that he or she would continue to operate the licensed business over a multiple year period, based on the length of the license renewal period, in exchange for a long-term commitment to annually make a CEIP contribution to the City-sponsored Community Engagement and Investment Fund (CEIF). The CEIF contribution may be based on a City-defined percentage of projected gross receipts for the year just ending, or other determinative factors.
- c. Community Activities Commission. The CAC may function as a Community Benefits and Investment Advisory Committee (CBIAC). In this capacity, the CAC would consider the distribution of CEIF contributions for Montclair-based and/or Montclair-directed charitable/non-profit organizations, educational programs, public works projects, parks programs/equipment, and other eligible services and activities. Under City established guidelines, the CAC may elect to establish provisions that require licensees to proactively engage with the community to identify recipients for community benefits.

In the event the City Council approves a commercial cannabis ordinance, City staff will continue to explore options for a community benefits funding program, as well as options for social equity programs.

Community Benefits Funding Program Comparative Analysis

With respect to the City Council's questions regarding community benefits programs as operated by other agencies in relation to their respective commercial cannabis programs, City staff made inquiries with a number of agencies and presents the following:

- City of Pomona: The Pomona commercial cannabis license application process is based on a point system. By opting into Pomona's community benefits funding program, the applicant receives an additional 50 points, increasing the applicant's overall score and consideration for a commercial cannabis business license. The application process in Pomona is competitive; thus, every merit point allocated makes a difference in the approval process and consideration for a license. To achieve the available 50 points, the applicant voluntarily agrees to a contribution of one percent of gross receipts. To date, all applicants have opted-in to Pomona's Community Benefits Funding Program.

The applicant may designate the following programs/activities/funds/services for their respective contributions: educational programs, schools, recreation programs, parks, community improvement programs and charitable funds. Pomona officials note that the Pomona Unified School District will not accept any form of contributions from the city's commercial cannabis community benefits funding program.

In order to promote each commercial cannabis licensee's impact within their respective operational area, the Pomona program provides that recipients of contributions from the community benefits fund program must operate within 0.5 miles of the cannabis business making the contribution. This feature clearly limits Pomona's community benefit fund program from making a community-wide impact.

Community benefit fund contributions are due at the time of permit renewal, and the one percent gross receipts contribution must be confirmed by Pomona officials.

Licenses can donate (i) directly to an organization or organizations, as determined during the application process; or (ii) to the City-operated community benefits fund.

If a licensee wants to maximize its contribution, and provided that Pomona has no involvement in the project, the licensee can contribute toward completion of an improvement project, with approval of Pomona officials. For example, the licensee can provide for the installation of playground equipment at a public park. This provision allows for the licensee to maximize the contribution by avoiding certain procurement costs, including prevailing wage requirements under the Davis-Bacon Act (1931); however, this option requires no involvement by the municipal agency in order to avoid a violation of Davis-Bacon.

- City of Claremont: Claremont has placed on the November 8, 2022, General Municipal Election Ballot commercial cannabis business tax Measure CT. To date, Claremont has not developed a community benefits funding program. Any such program would be determined during development of regulatory requirements related to operation of commercial cannabis businesses in Claremont.
- City of Santa Ana: Effective January 1, 2024, all commercial cannabis businesses operating in Santa Ana will be required to provide community benefits through a "Community Benefits, Sustainable Business Practices, and Social Equity Plan" that promotes the health and sustainability of the community. Specific parameters of the program are still being determined.
- City of San Bernardino: Every applicant and licensee is required to participate in a "Community Engagement Program." Participation can be in the form of in-house events, informational seminars, drug education, food drives/holiday events, or public events on-site that incorporate an informational/educational component.

Licenses are required to incorporate Community Engagement Program concepts into their annual license renewal request. San Bernardino does not require a set percentage or contribution amount. San Bernardino reports that existing businesses have been generous in donating to the city's community benefits funding program.

- City of Corona: For storefront retailers and storefront retail microbusinesses, a commitment by applicants to implement community benefit actions or measures is required. Specifics of Corona's community benefits program are included in the application process; however, at the time this report was prepared, City staff has been unsuccessful in obtaining further information about the Corona program.

Social Equity Component Comparative Analysis

With respect to social equity programs, City staff made inquiries with a number of agencies and presents the following:

- City of Pomona: Currently, Pomona does not require inclusion of a social equity component. Pomona does require that licensees offer a “living wage” as set by Los Angeles County, and hire 30 percent of their respective work force from within the local area.
- City of Claremont: There is no specific social equity component outlined by Claremont at this time. Specifications of any such program may be determined during the regulatory session to be held after consideration of Claremont’s commercial cannabis tax measure submitted to voters for the November 8, 2022, General Municipal Election.
- City of Santa Ana: By January 1, 2025, all licensees shall be required to comply with social equity obligations, as per the approved format established by Santa Ana. Santa Ana’s social equity program is comprehensive, and provides for the following:
 - Participating retail licensees, upon certification as a “Qualified Social Equity Commercial Cannabis Business Operator” by the Santa Ana Planning and Building Agency, are eligible for the applicable, discounted Commercial Cannabis Retail Business tax rate, as established by the City.
 - “Qualified Social Equity Commercial Cannabis Retail Business” tax rates become effective on the first day of the first calendar month following the issuance of confirmation of qualification notification.
 - A licensee seeking certification as a Qualified Social Equity Commercial Cannabis Retail Business shall provide documentation showing that it commits to, and satisfies, the following social equity measures:
 - Full-time jobs. Sixty percent (60%) of the licensee’s workforce is hired for full-time work—defined as paid hourly wages for an average of at least 32 hours per week, or 1,664 hours per year.
 - Wages. Employees, not including supervisors, must receive wages that exceed 115 percent of the California minimum wage at the time of hire, increasing to 120 percent within three years or as determined by the City.
 - Delivery Drivers. Delivery drivers must be reimbursed for mileage according to the Internal Revenue Service’s Standard Mileage Rates.
 - [High Road Training Partnership \(H RTP\)](#). Licensee participates in a High Road Training Partnership of the sort defined by [California Unemployment Insurance Code Section 14005](#). The High Road Training Partnerships (H RTP) initiative is designed to model partnership strategies for the state and is championed by the [California Workplace Development Board](#).

Ranging from transportation to health care to hospitality, the H RTP model embodies industry partnerships that deliver equity, sustainability, and job quality. The industry-based, worker-focused training partnerships build skills for California's "high road" employers—firms that compete based on quality of product and service achieved through innovation and investment in human capital, and can thus generate family-supporting jobs where workers have agency and voice.

- Social Equity Policy. The licensee shall maintain a written social equity policy that describes the following:
 - (i) How the licensee aims to recruit, hire and retain employees who reside in low-income census tracts in Santa Ana where at least fifty-one percent (51%) of the current residents have a household income at or below eighty percent (80%) of the County Area Median Income.
 - (ii) How the licensee will partner with community benefit organizations or its High Road Training Program to recruit, hire, and retain employees (i) arrested or convicted for a crime relating to the sale, possession, use or cultivation of cannabis prior to November 8, 2016, that could have been prosecuted as a misdemeanor or citation under current California law; or (ii) currently receiving unemployment benefits.
 - (iii) Any other measures or employee benefits aimed to address the disproportionate impact of the War on Drugs in certain communities affected by it.
- Equity Opportunities. Licensees must demonstrate that twenty percent (20%) to forty percent (40%) of all employees employed in the last tax period, as determined by city officials, were Equity Employees; or demonstrate that hourly, non-supervisory employees receive employee stock ownership options or other equity.
 - (i) As defined by Santa Ana, an "Equity Employee" is a natural person who resides in low-income census tracts in Santa Ana where at least fifty-one percent (51%) of the current residents have a household income at or below eighty percent (80%) of the County Area Median Income.
- Local Hiring. The licensee shall demonstrate the following:
 - (i) The licensee demonstrates that, by a designated date, forty percent (40%) of its employees reside within the City of Santa Ana.

- Compliance. Santa Ana city official shall determine compliance with social equity provisions as follows:
 - (i) Licensee shall submit an attestation form signed by a bona fide labor organization, and a copy of an active collective bargaining agreement with a bona fide labor organization indicating the licensee is in compliance with social equity measures.
 - (ii) Any supplemental documentation as needed to review and verify the submitted attestation.
 - (iii) Proof of active participation in High Road Training Partnership, demonstrated by providing a signed letter from the entity responsible for managing the training partnership. The letter must confirm the High Road Training Partnership's state recognition and the business's participation, and shall describe the High Road Training Partnership, its constituent organizations, goals, and training offered to cannabis employees. A copy of a grant contract with California that recognizes the program as a High Road Training Partnership shall be attached to the letter.
- City of San Bernardino: Currently no social equity program in place in San Bernardino. City officials are in discussions to incorporate a social equity program into any new round of applications.
- City of Oakland: Oakland implemented an "Equity Loan Program," re-investing commercial cannabis tax revenue into economic opportunities for those impacted by the War on Drugs. The Oakland grant program utilizes funding from the Bureau of Cannabis Control to provide grants to Oakland's cannabis equity entrepreneurs. Entrepreneurs are provided with assistance through Oakland's [Gaining Resources to Achieve Sustainable Success \(GRASS\) Program](#). GRASS helps Oakland's Equity Loan and grant recipients build long-term sustainable and successful businesses.

FISCAL IMPACT: Review and filing of this Response to City Council Inquiry incurs no fiscal impact to the City's General Fund.

RECOMMENDATION: Staff recommends the City Council receive and file this Response to City Council Inquiry regarding commercial cannabis community benefits funding and social equity programs.

**MINUTES OF THE MEETING OF THE MONTCLAIR
PERSONNEL COMMITTEE HELD ON MONDAY,
SEPTEMBER 19, 2022, AT 6:10 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 6:10 p.m.

II. ROLL CALL

Present: Mayor Pro Tem Ruh, Council Member Johnson, and City Manager Starr

III. APPROVAL OF MINUTES

A. Minutes of the Regular Personnel Committee Meeting of August 15, 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 15, 2022.

IV. PUBLIC COMMENT - None

V. CLOSED SESSION

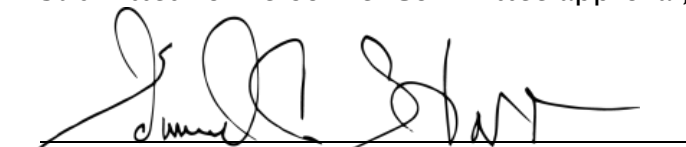
At 6:11 p.m., the Personnel Committee went into Closed Session regarding personnel matters related to appointments, resignations/terminations, and evaluations of employee performance.

At 6:45 p.m., the Personnel Committee returned from Closed Session. Mayor Pro Tem Ruh stated that no announcements would be made at this time.

VI. ADJOURNMENT

At 6:45 p.m., Mayor Pro Tem Ruh adjourned the Personnel Committee.

Submitted for Personnel Committee approval,



Edward C. Starr
City Manager

MINUTES OF THE REGULAR JOINT MEETING OF THE MONTCLAIR CITY COUNCIL, SUCCESSOR AGENCY AND MONTCLAIR HOUSING CORPORATION BOARDS, MONTCLAIR HOUSING AUTHORITY COMMISSION, AND MONTCLAIR COMMUNITY FOUNDATION BOARD HELD ON MONDAY, SEPTEMBER 19, 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 Donald Rucker, Christian Development Center, gave the invocation.

III. PLEDGE OF ALLEGIANCE

Staff Sergeant **Hadar Espinoza, United States Army**, 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. **Presentation of Annual Donation by the Montclair Chamber of Commerce to the Montclair Community Foundation for the Montclair to College Program**

Mr. Steve Hammitt, Chair, **Chamber of Commerce** Board of Directors, presented a check for \$875 raised from its Military Banner Program to Mayor Dutrey as a donation to the Montclair to College Program.

B. **Training and Education Program by Southwest Regional Council of Carpenters — Postponed**

VI. PUBLIC COMMENT

A. **Ms. Ruby Long**, Field Representative for **San Bernardino County Fourth District Supervisor Curt Hagman**, stated the District will be hosting its quarterly shredding event on Saturday, October 15, from 9:00 a.m. to noon at Ontario Police Department located at 2500 S. Archibald Avenue, Ontario. She also announced the District will host a Veteran Claims Event on Wednesday, November 9, from 10:00 a.m. to 2:00 p.m. at the District office located at 14010 City Center Drive in Chino Hills.

B. **Ms. Susan Shea**, resident, stated her property was damaged by **Southern California Edison (SCE)** when they accessed her property without permission or prior knowledge, and she has not been able to resolve the issue. She noted she has been in communication with a City staff member.

City Manager Starr advised staff would attempt to contact **SCE** on behalf of **Ms. Shea** to get the matter resolved.

C. The following individuals voiced safety concerns regarding the student drop-off location south of **Monte Vista Elementary School (MVE)**, including illegal U-turns, parents dropping children off on the wrong side of the street, and speeding:

- **Mr. Joseph Meza**, resident

- **Mr. Shawn Guthrie**, resident
- **Ms. Adrian Koelliker**, MVE Teacher
- **Mr. John Christianson**, resident
- **Mrs. Eleni Christianson**, resident

The speakers urged the City to improve safety conditions on the street.

- D. Mr. Bruce Culp**, resident, expressed his support for the parents and educators who spoke tonight about traffic safety. He suggested they speak to Executive Director of Public Safety/Police Chief Avels who is usually in attendance at Council meetings and is responsive to residents' traffic concerns.

Director of Public Works/City Engineer Heredia presented a map of the **MVE** drop-off area being discussed and explained the temporary safety improvements the City will be implementing including adding signs and creating a painted median.

City Manager Starr advised the City has requested **Ontario-Montclair School District (OMSD)** make changes to their property for the drop-off configuration by removing the current parking spaces and turning them into a drop-off corridor with a physical barrier preventing cars from exiting before the end of the corridor. He advised the City's temporary measures would only provide police officers with additional ticketing authority for illegal and unsafe maneuvers.

VII. PUBLIC HEARINGS — None

VIII. CONSENT CALENDAR

Item C-10 was pulled from the Consent Calendar.

Mayor Dutrey entertained discussion on Items B-9, C-1, C-2, C-3, C-7, and C-8 prior to the 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-10 and approved the remainder of the Consent Calendar as presented, with discussion on the above-noted items:

A. Approval of Minutes

1. Regular Joint Meeting — August 15, 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 15, 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 August 31, 2022.

2. Approval of City Warrant Register and Payroll Documentation

The City Council approved the Warrant Register dated September 6, 2022, totaling \$2,594,308.17; and the Warrant Register dated September 19, 2022, totaling \$876,531.79; and the Payroll Documentation dated July 31, 2022, amounting to \$693,157.80 gross, with \$496,350.56 net being the total cash disbursement; and the Payroll Documentation dated August 14, 2022, amounting to \$720,818.31, with \$504,971.85 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 Redevelop-

ment Agency Treasurer's Report for the month ending August 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 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.

5. Receiving and Filing of MHC Treasurer's Report

The MHC Board received and filed the MHC Treasurer's Report for the month ending August 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 \$82,137.70.

7. Receiving and Filing of MHA Treasurer's Report

The MHA Commissioners received and filed the MHA Treasurer's Report for the month ending August 31, 2022.

8. Approval of MHA Warrant Register

The MHA Commissioners approved the MHA Warrant Register dated 08.01.22-08.31.22 in the amount of \$0.00.

9. 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

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

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

Council Member Lopez asked if the grant has been received for the Fire Department's purchase of a new fire truck.

City Manager Starr indicated the City has not yet heard and anticipates notification by mid-October. He noted if that does not happen, the City would move forward with the purchase without the grant.

The City Council took the following actions:

- (a) Authorized 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
- (b) Authorized 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.
- (c) Declared a 2000 Toyota Camry CNG (Unit 102) as surplus and available for parts or for sale at auction.

10. 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

The City Council received and filed the 2022 Local Agency Biennial Notice and directed staff to amend the City's Conflict of Interest Code Pursuant to the Political Reform Act.

11. 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.

C. Agreements

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

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

Council Member Johnson asked if this contract would be renewed after it is set to expire in June of 2023.

City manager Starr concurred, should both parties wish to renew.

The City Council took the following actions:

- (a) Approved *Agreement No. 22-81* with the Christian Development Center to provide case management services for the Homeless Program.
- (b) Authorized a \$19,800 appropriation from the Contingency Reserve Fund for costs related to *Agreement No. 22-81*.

2. 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

Council Member Lopez asked why the Chief of Police needs to approve the property management company, stating he feels it should be completely up to the property owner how their property is managed.

Executive Director of Public Safety/Police Chief Avels advised the review function is to ensure that the property manager or company are experienced and reputable to ensure they are able to manage issues to reduce calls for police service.

Director of Community Development Diaz noted the property owner has already approved the conditions and agreed to the standards contained for the property management company, so he does not foresee any issues.

Council Member Lopez stated concerns regarding legal challenges to the requirement. He stated he would contact the property owner to make sure they are aware of what they are agreeing to.

The City Council approved *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.

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

Council Member Johnson asked if this project would implement a new electronic system.

City Manager Starr advised the City has several electronic

systems already in place and this process would assist with ensuring compliant procedures are followed.

City Clerk Myrick clarified the consultant would review all of the City's records repositories, both paper and electronic, and assist staff with determining the most efficient ways to structure and manage the records across platforms, which could include recommending new software to purchase.

The City Council approved *Agreement No. 22-93* with Records Control Services, Inc. for records management consulting services (inventory assessment, updated retention policy, and strategic roadmap).

4. 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

The City Council approved *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.

5. 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

The City Council approved *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.

6. Approval of Agreement No. 22-96 with the International Language School for Children & Adults (ILSCA) for Language Testing Services

The City Council approved *Agreement No. 22-96* with the International Language School for Children & Adults (ILSCA) for language testing services.

7. 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

Council Member Lopez asked if the proposed rates are comparable to the City Attorney's other clients.

City Attorney Robbins advised there is only one other government client who is currently paying the proposed rates.

The City Council approved *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.*

8. 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

Council Member Johnson asked how many advocates would be stationed and what services would be provided.

Executive Director of Public Safety/Police Chief Avels advised only one would be assigned for now and would provide services such as assisting with paperwork, referrals to counseling, and accompanying victims to court during proceedings.

The City Council approved *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.

9. 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

Authorizing a \$10,000 Expenditure from the SB 509 Public Safety Fund for Costs Associated with Agreement No. 22-103

The City Council took the following actions:

- (a) Approved *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.
- (b) Authorized a \$10,000 expenditure from the SB 509 Public Safety Fund for costs associated with *Agreement No. 22-103*.

D. Resolutions

1. 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

The City Council adopted 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.

2. Adoption of Resolution No. 22-3379 Approving a Five-Year Capital Project Needs Analysis for Fiscal Years 2023-24 Through 2027-28

The City Council adopted Resolution No. 22-3379 approving a Five-Year Capital Project Needs Analysis for Fiscal Years 2023-24 through 2027-28.

IX. PULLED CONSENT CALENDAR ITEMS

C. Agreements

10. Amending the 2019-2024 Capital Improvement Program to Add the CDBG Target Area Alley Improvements Project

Authorizing an \$849,440 Appropriation from Community Development Block Grant (CDBG) Funds for Costs Related to the CDBG Target Area Alley Improvements Project

Authorization to Advertise for Bid Proposals for the CDBG Target Area Alley Improvements Project

Authorizing the City Manager to Award Agreement No. 22-104 for Construction of the CDBG Target Area Alley Improvements Project

Council Member Lopez raised several concerns regarding parking, trash pickup, street sweeping, and prolonged access issues that residents will face during the paving projects, especially those who do not have driveways or access their garages from their alley.

City Manager Starr clarified the alley should not be inaccessible for more than a day and that scheduled services that coincide with the project such as trash pickup and street sweeping could be rescheduled if necessary.

Moved by Mayor Dutrey, seconded by Council Member Johnson, and carried 4-1 (Lopez dissenting), the City Council took the following actions:

- (a) Amended the 2019-2024 Capital Improvement Program to add the CDBG Target Area Alley Improvements Project.
- (b) Authorized an \$849,440 appropriation from Community Development Block Grant (CDBG) Funds for costs related to the CDBG Target Area Alley Improvements Project.
- (c) Authorized to advertise for bid proposals for the CDBG Target Area Alley Improvements Project.
- (d) Authorized the City Manager to award *Agreement No. 22-104* for construction of the CDBG Target Area Alley Improvements Project.

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

2. Closed Session Pursuant to Government Code Section 54956.9(d)(1) Regarding Pending Litigation

George v. City of Montclair

C. City Manager/Executive Director — None

D. Mayor/Chair

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

Mayor/Chair Dutrey announced members of the City Council, Planning Commission, and Community Activities Commission will participate in a stakeholder workshop to discuss the Parks and Recreation Master Plan on Monday, September 26, 2022, at 6:00 p.m. in the Senior Center.

2. Mayor Dutrey made the following comments:

- (a) He stated he would like to discuss the City Manager's evaluation at the next regular meeting during closed session.
- (b) He stated he attended the **League of California Cities (LCC)** Annual Conference in Long Beach and the installation of officers for the **Montclair Chamber of Commerce**.
- (c) He stated he is excited to see youth programs are starting up for the fall.

E. Council Members/Directors

1. Mayor Pro Tem/Vice Chair Ruh made the following comments:
 - (a) He stated he would like to have a discussion on building tiny homes for homeless veterans.
City Manager Starr advised staff is currently looking into this as part of the homeless program being developed and stated a workshop would take place in early 2023.
 - (b) He noted he also attended the LCC Annual Conference.
 - (c) He attended the **Metro Gold Line Joint Powers Authority** meeting last week.
 - (d) He spoke on the significance of the death of **Queen Elizabeth II** on September 8, 2022.
2. Council Member/Director Lopez made the following comments:
 - (a) He stated he and the Mayor attended the **Rodrigo's** restaurant's 50th anniversary event.
 - (b) He noted **Montclair Little League** opened its fall season this past weekend.
 - (c) He wished a happy belated birthday to Mayor Dutrey.
 - (d) He thanked the Montclair Firefighters who were assigned to assist with fighting the Fairview fire.
 - (e) He stated he received an update that the student who was stabbed while walking home from **Montclair High School** several months ago is making great progress with her recovery.
 - (f) He asked if the \$1,500 inflationary adjustments went out to all employees.
City Manager Starr advised it has not been disbursed to employees whose labor groups are still in negotiations.
3. Council Member/Director Johnson made the following comments:
 - (a) She advised the **Montclair Chamber of Commerce** is hosting another e-waste drive on Saturday, September 24th and 25th.
 - (b) She stated **Soroptimist International Montclair/Inland Valley** chapter is hosting a casino night at the Senior Center on October 8th.
 - (c) She announced **Hasco** Outlet in Montclair will be hosting a family festival and car show on November 4th.
4. Council Member/Director Martinez announced the City Council would be attending an awards ceremony to recognize 40 **OMSD** students who achieved perfect grades on their state tests.

F. Committee Meeting Minutes

1. **Minutes of Public Works Committee Meeting of May 19, 2022**
The City Council received and filed the minutes of the Public Works Committee meeting of May 19, 2022, for informational purposes.
2. **Minutes of Personnel Committee Meeting of August 15, 2022**
The City Council received and filed the minutes of the Personnel Committee meeting of August 15, 2022, for informational purposes.

XI. CLOSED SESSION


At 8:42 p.m., the City Council went into closed session to discuss pending litigation and labor negotiations.

XII. CLOSED SESSION ANNOUNCEMENTS

At 9:25 p.m., the City Council returned from closed session. Mayor Dutrey announced that the City Council met in closed session to discuss pending litigation and labor negotiations; information was received and direction given to staff; and no further announcements would be made at this time.

XIII. ADJOURNMENT

At 9:25 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